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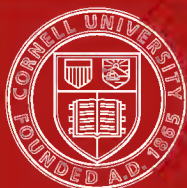
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PRINCIPLES
OF THE
COMMONWEALTH.

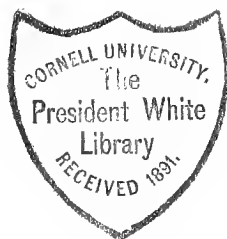
PRINCIPLES
OF THE
COMMONWEALTH.

A TREATISE.

BY
EDMUND LAWRENCE.

LONDON:
WILLIAM RIDGWAY, 169, PICCADILLY, W.

1884.
G.
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A. 2973

LONDON :

PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,
STAMFORD STREET AND CHANCING CROSS.

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PRINCIPLES

OF THE

COMMONWEALTH.

CERTAIN postulates must be granted, when entering on the examination of any science, or branch of human knowledge. Those postulates belonging to the exact, or mathematical sciences, may be expressed with the utmost brevity and definiteness of which language is capable. It is not so with those which belong to the moral and metaphysical sciences ; and it is not so with the definitions of terms. This will appear from the statement of the principal postulate of sociology, or the science of the commonwealth ; which, although it can be summed up in few words, yet contains in the summing up by no means all that the postulate involves ; and so far is it from being definite, that it must use in its terms an analogy derived from the natural sciences. That postulate is, that human society is in its structure organic and not mechanical. On the granting of this depends the existence of sociology as a separate science. For, if human society is in its nature mechanical, and if its operations are governed by mechanical laws, then sociology is not a separate science, but only a branch of mechanics. A postulate proper is not susceptible of any kind of proof excepting such as is afforded by a reference to universal consent ;

Postulates
and Defini-
tions.

to prove the above is probably impossible; but that universal consent admits it, is shown by the terms concerning human society and its nature which are in ordinary use. It is common to speak of the progress of society, and of the growth of society. Progress may be a term applicable to a machine, as it advances to completeness under the hand of its maker; but growth is not. Growth implies that there is a force or principle of life in that which grows; and life implies an organism. It would be found impossible to speak of human society, philosophically or analytically, without using words which imply the above. And this is true of all aggregations of men, of those which are formed on the most artificial systems as well as of those which appear of almost spontaneous origin. For example, it is a usual thing to say, "The army is animated by a good spirit;" "The meeting was dull and depressed;" etc., etc.

Another postulate of social science—not one which is essential to there being such a science at all, but one the granting of which is essential to a proper apprehension of the facts and phenomena of the science—is, that mental and moral qualities, like physical qualities, are hereditary. It would not be correct to say that this is incapable of proof; for, though not capable of demonstration, it may be ranked among the highest moral certainties. Its truth is constantly assumed in ordinary language and discussion. If it be possible to conceive of a person who should deny the existence of national character, he could not express his denial of it intelligently without using terms which would inferentially admit it. It has to be added, that the statement of the hereditary nature of moral qualities is rather the summing up of the postulate, than the postulate itself; for its value and importance consist of what it involves.

The statement that every human society is an organism in structure appears trite ; but it is necessary, as an introduction to a statement of the differences between the social organism and those organisms which overspread nature. All of them, that is the whole physical world, consists, as is believed and all but ascertained, of atoms, each of which has in itself no life ; and the life of the organic body, which is made up of several atoms, is inseparable from their due arrangement. It is thus a peculiarity of the social structure, in which it differs from all other organic structures, that each of its atoms is itself an organism. Other organic bodies contain, and produce, germs. Every component atom of the human society is itself a germ. Living bodies in the physical world animate their atoms ; the living society is animated by its atoms. When the vital force of a physical organism is destroyed, the atoms remain, inert and lifeless ; but when the social organism, from mischance or blame, perishes, its destruction may be the means, and, by experience, has often been the means, of stimulating the separated atoms into a more vigorous individual life. The vital force of each physical organism is conceivably susceptible of being estimated, and its amount stated in algebraic terms ; and whatever the sum total may be, the vital force of the aggregate as such is the main factor in producing that strength which belongs to the aggregate. It is contrary in the society. The internal and external force of the society is a resultant of the forces of its atoms. It is not the sum, nor the product ; what resultant it is, is probably not susceptible of being stated algebraically, even were it open to human power to gauge it. These are the structural differences between the social and all other organisms ; and underneath them remains that which is

the origin of those differences, viz. that the basis of human society is moral, or spiritual.

[The author is aware that the whole of the above paragraph, so far as its expressions reach, is likely to be set at naught and superseded as discovery in physics advances. But in such case, the language, contrasts, and analogies only would have to be changed; the idea of the fundamental characteristic of the social structure as a spiritual organism would be unaffected. Even supposing that, as scientific progress is made, it be at length shown that life is more universally diffused than is now known, and that every grain of sand is endowed with latent vitality and contains a germ, the difference in kind of moral or spiritual force from natural forces remains—a fact towards the disproof, as towards the proof, of which, no physical discovery has contributed, or from the nature of the subject can contribute, anything.]

[To assert that human society is organic rather than mechanical, and to assert differences between the nature of its organism and the nature of physical organisms, is not a contradiction in terms or a failure in reasoning, any more than to assert the existence of differences between organic and mechanical laws. A tree grows in obedience to organic laws; and its branches hang down in obedience to the law of gravitation.]

This also is a postulate, viz. that the social structure has a moral, or spiritual, foundation. Stated in the form, that the members of a society have duties towards that society, this postulate commands universal consent. Those duties constitute a large portion of what is commonly called morality; but the term spiritual, as applied to the proper foundation of human society, is more ample and expressive than moral. The use of the latter only might imply that social duty consists in no more than accommodation to the social manners (*mores*). Now, as it may happen that manners in part, though certainly never more than in part, may be immoral (to say which is an etymological absurdity, though correct according to the secondary and con-

ventional meaning of *moral*), the use of the term spiritual carries with it an assumption perfectly legitimate, that duty consists in obedience to the spiritual part of human nature, otherwise conscience.

In another aspect, all greater human societies are founded upon the original society, that which precedes them all—the family; and this aspect is perfectly congruous with the former, in that the essence of domestic relations is reciprocal duty. This is not a postulate, although a position practically as important as if it were; for a race of responsible beings, in all respects like the human race, save in being destitute of the domestic institution, is conceivable.

It being granted that human societies are in their nature organic, each organism differs from all others; and the differences are great—so great that they may bear, without any indulgence by the observer of mere fancy, likenesses to physical organisms of entirely dissimilar classes. Life is common to them all; but progress is not universal. It is said that the greatest forest trees are a century in coming to maturity, that they continue in that maturity for another century, and that during the third century they decay. Some human communities present evidently analogous phenomena, arriving at a stage of development at which they (at least apparently) stop for a time longer or shorter, and then decline, their fall often being hastened by accidents from without, as the withering of an oak is hurried on by a thunderstroke, or its roots loosened by a tempest. The histories of some states have evident likeness to the history of the individual man; and these, though in appearance not all of the greatest grandeur or sublimity, have been morally the most eminent. The phenomena of crystallization are supposed to furnish evidence of a kind of community between it and real

organisms ; and there is, no doubt, a superficial resemblance of crystallization to the granulation of muscular tissue. There are forms of civilization which suggest a comparison between themselves and crystallized substances ; hard, regular, beautiful ; without growth and with but a low degree of life ; but susceptible of destruction by violence and of mere disintegration by time.

Nothing is known historically of the facts of the origin of human society. In physics, similarly, the process of birth or of germination is but little more than matter of conjecture. It is not a mere far-gone, unpractical matter, that the family is the root of the state ; it rises into observation at every turn of private and public life. What is hidden is the manner in which the great society was first organized, or first organized itself, out of the smaller ones. In all probability the process was unconscious ; that is, it was involuntary, and was voluntary also, as a child an hour old sucks milk. There is an idea amongst many that government is necessary only because human nature is imperfect or faulty ; which idea generally takes the form of a conviction that there is a necessary and constant struggle between (what is called) order and (what is called) liberty. Now, order is nothing more than law brought into practice ; and all organic bodies, all nature, are subject to law, and would have no existence under organized forms without it. Let a community be supposed in which there is neither moral nor physical evil ; law is as necessary there as in a sinful society ; and that community would be perfect, because there perfect law would run its perfect course, and produce perfect liberty.

[St. John says that "perfect love casteth out fear ;" that is, not that the perfect man is not subject to law, but that he does not fear it.]

[A man dressed in tight, well-fitting garments has more liberty for his limbs than one who wears loose, flowing robes.]

The process of the formation of states, as spoken of above, was probably unconsciously passed through by those who formed them ; not the less did they obey the law of their nature in establishing states. All analogies derived from the example of a ship's crew, the captain and the mate lost, thrown on a desert coast, are illusory. These have experience to guide them ; and though the best intellect and the strongest will in such cases, as in all cases, assert themselves, no permanent and living society has been known to establish itself from such elements. It may be matter of disappointment, though it is not really a loss, that the earliest chapter of the history of human society is unwritten. Were it before men, with all its facts detailed, the disposition to "recur to first principles," one of the most dangerous dispositions in practical affairs, would be almost invincible. The history of the Christian Church is an illustration of this. The account of its institution given in the Book of Acts is short ; its early progress is not detailed, and the facts concerning it are, for the most part, so far as they can be determined, only to be arrived at in a fragmentary state. Meagre as they are, this is the portion of Scripture history which has composed for many centuries the main armoury of fanatics, both ignorant and cultivated, who deny or ignore the universal fact of the law of development as affecting all human societies. Government is a matter of experience and of expedience ; and the principles which should guide it are to be reached *à posteriori*. The moral or spiritual principles upon which government rests, and to whose existence it owes its existence, are not of the same category with those principles, or rules of conduct, under which it ought to be carried on. The latter are practical maxims

of art, subject to change and subject to differences of administration. The former are permanent scientific laws. This is not a postulate, but a conclusion; it holds, however, the same relation to the art of government as postulates do to science. Leaving, then, the subject of the origin of the first established societies, what is of importance in their earlier history is the functions which the societies as such assumed. Before entering on this matter, it will be proper to inquire into the proper meaning of some terms, the use of which is necessary and must be frequent; and mention has to be made of a certain scientific law, not belonging exclusively to sociology, which it is necessary to incorporate with its postulates.

The progress which has been made during the present century in scientific discovery, and consequently in mechanical and other invention, has been accompanied by an advance, equally remarkable, in the science of jurisprudence, both theoretical and applied. An improvement has taken place during the same period in the habits both of individuals and of the communities of Western Europe, in the matter of private and public cleanliness. Observing this, it is universally recognized, that the nineteenth century has been distinguished by the nations referred to reaching the highest level of civilization which has yet been arrived at by any portion of mankind. There can be no question that a profound knowledge of scientific laws is a mark of civilization; whether of those laws which concern physics and the more abstract sciences, or of those which concern the human mind, and the relations of man to man, in the individual and in the bulk. Greece, the fountain of philosophy, and Rome, the parent of law, are instances. Also, civilized races of men have generally attached high importance to cleanliness. The Hebrews, who washed

before they ate; the upper classes of Italians in the Middle Ages, who made almost a worship of personal cleanliness; the Normans of the eleventh century; and the majority of well-to-do English of this time, are the most notable examples. Those two nations, the England and the France of the present, which are commonly spoken of as the most civilized, are the most advanced in their public sanitary legislation and arrangements. The above is a description rather of what civilization has produced, than of what it consists in. In seeking the proper definition of a term, sight must never be lost of its derivation, however far its secondary meaning may have travelled from the meaning of the root. The word in question has not travelled very far. It is connected with the community; the existence of a community implies good order; and as good order exists in degrees, and as civilization does also, it is not erroneous, though it is not as exact as a mathematical definition may be made, to assert that civilization consists (at least in part) in living in good order in communities.

There are few words which will occur more often, and the importance of which is greater, in discussing matters concerning the state and human societies in general, than the word "constitution." There are states which have adopted in the early stages of their lives written codes; and the general approval of generations, and their traditional attachment, have given to these codes a sanctity and a strength so great, that a proposal to change them would be set aside by the general voice, on the mere conservative ground that such would be unconstitutional. Many corporations, and nearly all universities, have charters which their members in like manner regard as their constitutions. Other States, of which the most conspicuous is England, have constitu-

tions which have never been so embodied in any one Scripture; and, notwithstanding, have as real an existence as those which are exact and definite. They have a soul if not a body. It is plain that it is much more difficult to define in such cases what is unconstitutional than it is when there is a written code ready to hand to appeal to. Unconstitutional is not a synonym for illegal. It would be competent to the British legislature to abolish trial by jury by its act; and after such act were passed, trials by the judges alone would not be illegal; but such an act would be unconstitutional in the highest degree. It is, however, more usual in England to apply the term to the acts of ministers and legal tribunals than to laws enacted by Parliament; and the common understanding of the term is, that which is contrary to the spirit of the constitution. The most inclusive definition of an unconstitutional act is, a straining of the powers of the constitution to its detriment. This definition will cover the conceivable case of the refusal of the king's assent to a bill, passed repeatedly by the Houses. (William the Third refused his assent to a bill—the Triennial Bill—once; but he was advised, on constitutional grounds, not to repeat the refusal.) The term has necessarily a degree of vagueness. An unwritten constitution or code has not the immobility of one which is reduced to writing; it is susceptible of development and growth; and therefore that may be stigmatized as unconstitutional which is a legitimate development of what has preceded it. It is accordingly a word to be used with caution, to avoid the misuse to which it is very apt.

There is a word retained in the English language which, owing to an unhappy accident of our history, has been largely diverted in its meaning from that which it bore three hundred years ago. Commonwealth

is as literal a translation as we have of the Latin *Respublica* (Republic); and in the Tudor times, and up to the time of Cromwell, was almost always used in such cases as we now use *State*. Commonwealth is ampler than either state or republic. State means the established government; republic is to be rendered from its two components, the affairs of the community; commonwealth is the general well-being. It is matter of regret that this magnificent word, used constantly in old acts of Parliament, and a favourite one with all our greatest political essayists (Hooker, Milton, Burke), should have almost entirely passed out of its proper use; being generally made to refer to an unsuccessful political experiment.

It is justly considered that one of the very greatest contributions to the body of our scientific knowledge is the recent announcement of what is called the law of natural selection, or the survival of the fittest. This is a law which obtains not in the physical world only; it has also a moral application. What is meant will be instantly understood by reference to the influence of strength of character and intellect on the part of the individual upon the mass; and upon the part of masses upon masses. It is, therefore, proper that this law should hold a place as amongst the postulates of social and economic science. Closely connected with this law are the laws of development, and transmission of physical qualities by descent; and, inferentially and certainly, the transmission in same manner of mental and moral qualities.

It is to be remarked that the truth of the law of natural selection was ascertained in one case of its application long before the time of Huxley and Darwin; and that in economic science. The doctrine of free trade—the received conclusion that men should be

undisturbed by the state in their industrial and commercial affairs—is but a case of the wider law. It is by no means new in the history of scientific research, that a truth should be established as such in one limited scope before it has been discovered to be general. On the contrary, it would have been very remarkable if Darwin and Huxley had preceded Smith and Mill, and one of the greatest of economic conclusions had been reached synthetically.

Socialism or communism, as a doctrine or set of doctrines respecting social subjects and principles, has necessarily different meanings attached to it from time to time according as the form or substance of the doctrines varies. Forty or fifty years ago the followers of Fourier were supposed to be devoted to the abolition by the powers of the society of every interior society, including that which has hitherto in all nations been the fundamental one—the family; and to the substitution for the social fabric so destroyed of an apparently simpler one, in which there should be perfect and entire liberty of the individual in all things except property; property being regarded, no matter how acquired or produced, as the right of the state. The more recent socialist schools have dropped the old enmity of the followers of Fourier and Owen to the marriage institution; and the chief of them, and the most influential, now advocate nothing that is opposed to present social conditions as based on and connected with property, further than a larger and more principled interference on the part of the state, with the distribution of it, than has ever yet been attempted in Europe, and the like of which has never appeared except in the accounts, probably highly drawn, which we have of the monarchy of Peru. Various socialistic sects recommend more or less of such state interference; all of them apparently

basing their several plans on a setting aside or ignoring of the law of natural selection. That law is evidently a law applicable to averages and not to the individual infallibly; and is therefore susceptible of being set aside or opposed, in a way in which the rigid physical laws of the universe are not. All opposition to it by the state, in its institutions or by its legislation, towards the distribution of property according to views of justice or equality taken through warped or artificial media, is of the nature of socialism; all the communistic schools holding that, in the matter of property, the natural rights of the society are higher than the natural rights of the individual.

Value is a term which occurs so often in economical discussions, that an apprehension of its meaning is indispensable. Commercial value is not a different thing from value in the ordinary sense; both mean nearly the same as appreciation. The definition of some of the older economists, that value is based on utility, is misleading, not to say erroneous; for it does not describe utility: both are really relative. Things that are useful for one purpose are useless for another; and things that are valuable in one relation are worthless in others. Commercial value is the general appreciation of things which are susceptible of commercial exchange, measured arithmetically; it is identical with price, supposing that that in which price is measured does not itself change in value. For instance, in America, during the civil war, a dollar became worth only eighteenpence; and a hat, which before the war was sold for five dollars, became saleable for twelve or fourteen; but the hat, by varying in price, did not vary in value; it was the price itself which varied in value. People's appreciation of an article of commerce is a balance between their desire

for it and their avarice ; and the constituent of its cost, or of the price at which it is submitted to them for purchase, is the amount of labour that has been bestowed on making it ; the price paid being equal to the cost of other things which are indirectly given in exchange.

The relations of the Society to Ecclesiastical Societies.

The usual division of government into the three departments of legislation, administration, and the judiciary, is generally correct, although not exact, in those states which have attained some degree of advance in their organization. It is not applicable to the earlier states ; and till it is known what administration includes, as a definition it is not sufficiently close. The first rulers—heads of tribes—combined in their persons the functions of leaders, or those who went forth with their armies ; of judges, or those who dealt out justice at the gate ; and of priests, or those who mediated between the tribe and its deity,—for religion was a matter of national concern, not only by universal consent, but in that the god was the special god of the tribe or nation. The lawgiver came, in point of time, after the priest, the warrior, and the judge. For the justice which the judge-king dispensed was derived from obedience to the general customs, and to those rude ideas of right which belong to all men. The lawgiver, who reduced old customary rules to maxims, is a product of the second, not of the earliest, stage of human progress. The division of labour in other things, as in commerce and manufactures, comes from the advance of civilization ; and the first of his various powers which the monarch dropped was the priesthood.

There is an instinct, almost universal, of a difference between things secular and things sacred; and this instinct is often the strongest in those, both persons and peoples, who are least able to tell what the difference is or consists in, and who make the most flagrant and mischievous mistakes in their recognition of the boundary which separates them. It will be for ever unknown what contests raged till the separation of the powers of the kings and priests was accomplished; it may, from examples of the constantly recurring strife, as it arose in various forms, be supposed that the first struggles were violent, if not long. The principle which lies under the struggle—the acknowledgment of the difference between the sacred and the secular—involves a series of political problems which recur in various shapes and in all times. It is as evident that human affairs have the two aspects as that the human body is provided with two arms; beyond this, there is nothing certain or axiomatic; and here is commenced the examination of sociology as an experimental science.

In accordance with the general law of natural selection, if the sacred order is possessed of a greater amount of knowledge and a greater degree of intelligence than any other class of the community, its political influence and power must be greater; and in many cases that power has been overwhelming. This exclusive possession of the weapons which knowledge gives can prevail only in a low state; and the first revolts against priestly political authority, assisted, no doubt, by the instinctive jealousy of physical strength towards intellectual, must have been also owing to a more righteous and legitimate jealousy of exclusiveness, and must have been accompanied by an advance of intelligence in the mass or in part of it. No completer case of priestly tyranny can be imagined than when the priest was the same person

as the head of the state; and the first sensible advance towards ordered liberty was the separation of the offices. It does not follow that the sacred order should be deprived of all power in public affairs; that would be impossible, if it is to exist at all. Its deposition from supremacy is the first step in that course which terminates—if such can really ever terminate—in reducing it to that position which, varying according to various conditions, it ought to occupy. What that position is is a perpetually recurring problem in politics; chiefly in Christian communities. They are amongst those most advanced in civilization, and have so been for many centuries; and the Christian Church being a very highly organized society, there are points of contact between the Church and the state, which from time to time, the Church being necessarily administered by a standing priesthood, become points of collision between that priesthood and the authorities of the state. Among some races of men, and with some religions, the occasionally arising contest may lie dormant for ages; in Christian societies it seldom can. In the decay of superstition which proceeds with increasing knowledge, those religions which have in them the most largely corrupted elements must suffer in general repute as their fallacies and vices are exposed, more than it is possible that the purer religions can, no matter how searching light be cast upon their secrets; and when, as happened in the decline of Roman heathenism, the religion is discredited, its priests, ceasing to be intellectual and moral leaders, cease to be political leaders also. Of all those faiths which men, assisted and influenced by Divine revelation, have constructed, the Christian, even in those inferior forms which prevail in the old countries of the Levant, and amongst those African tribes which have adopted it in late periods, is

the purest and best, and the most adapted for universality. Its various priesthoods have generally kept themselves on at least a level with the populations around them; it has a strong and expansive general vitality; and by reason of its very virtues, that class of claims to power in the state which no separate order of men having once reached ever renounces, will continue to be pressed by its ministers; or if withdrawn, be withdrawn only to be put forward again. There are some communities which have, earlier than those now more advanced, attained to a high and very stable order; which order has been preserved through generations and centuries unchanged; and, in the case of China and the Brahminical Hindoos, all but unimpaired. In those states the relative positions of king and priest were settled in prehistoric times; and the stationary condition of the states has prevented matters of dispute from arising, the like of which cannot but arise where there is more progressive life. The old contests are mere matter of tradition; even Zoroaster, the Luther of that attractive race who of all Asiatics most resemble Europeans, is little more than a figure in mythology. In Mahometan states there is no priesthood. Priestly claims to power appear to have formed but a very small part of those causes which led to disputes among the classical peoples; one remarkable instance to the contrary in the early history of Rome, when religious objections delayed for many years the Licinian law, and probably had delayed its proposal for generations. Those societies which in overt fact or by implicit habit make the state an object of worship, are comparatively the most free from the class of disputes spoken of. That state-worship is manifest in all Roman history; and received its embodiment when the Cæsars were placed in the Pantheon. A like immunity, not so com-

plete, but as remarkable when it is recollected that France is Christian, prevails in the politics of that country since the Huguenot wars; it is not difficult to perceive a connection between the universal unquestioning support given to Lewis XIV. in his dispute with the papacy about presentations, and the adulation, almost idolatry, with which he was treated as head of the state.

[The recent expulsion of clerical orders, whether it is to be approved or the reverse, could have been carried out in no other country without a convulsion. The possessor of power in France for the time being is all-powerful. This is one form of state-worship; also an effect of that moral cause. State-worship is very different from patriotism; as different as bigotry is from faith.]

The interest to modern generations of the earlier contests between the sacred and secular powers is not merely antiquarian; it is to them a reminder that in all ages the grand political matters at issue—those concerning the distribution and residence of authority—are fundamentally similar. It was in ancient times as it is now; intelligence of a higher kind overtaking intelligence of a lower. Whenever the priestly class has attained a high political position, it is a mark of a low civilization; and in the contests arising from the attempts to supersede or depress it, the least enlightened of the community generally have sided with it. There is a constant enmity observable between territorial and spiritual aristocracies; and a sympathy, nearly as constant, between the latter and the common people. There has always been a disposition in Europe of the clergy to dissociate themselves from the national feelings and tendencies of the various peoples; and national development has been a factor of very great force in producing progress in civilization. Whenever a sacer-

dotal party has succeeded in obtaining the lead in a country, anarchy and disaster have followed; generally with speed, and always with certainty. Such exceptions as may be instanced against this will be found on minute investigation to be only superficially exceptions; and the conclusion is not to be set aside, that the spiritual order is by its nature unfit for the administration of the commonwealth. In that dreary and dreadful period which followed the fall of the Western empire, after the northern conquerors had received a debased form of Christianity from Italy, when arts and learning had almost ceased from out the world, there grew up that complicated and powerful organization which eventually overshadowed all Europe. Its condition was indeed low, when the monks and clergy of the middle ages held the monopoly of its educated intellect. The first revolt against the political supremacy of the clergy—and that revolt was anything but a complete one—was the empire of Charlemagne, which was a failure. His crown “tumbled into a sea of blood.” The Saxon emperors can scarcely with propriety be considered as the successors to his authority; nationally they certainly were not; but they faithfully carried out his ideas, with the curious result, that their victory over the papacy furnished it with the means of reforming and strengthening itself. The next stage of the long feud between the temporal and spiritual powers is unmistakeably marked by the introduction of party names. The modern Italians have completely misread the events of their history at the time when their nation first began to be formed. The idea that a native of Italy as such, in the twelfth century, should be a Guelph rather than a Ghibelline, would have been unintelligible then; and even in the fifteenth century would have received but slight appreciation. Cæsar, to the men of those times,

was the Cæsar of the known world ; and their theoretical allegiance to him was unaffected by the circumstance of his transalpine birth and mode of election. The real cause of the papal strength lying chiefly in Italy, and the imperial in Germany, was in the political conditions of the two. The local municipal organizations of ancient Italy had survived the anarchy of the barbarian conquests, as similar institutions often survive even greater revolutions ; these all had a root of democracy, the nobles who owned, by usurpation or consent, more power and influence than had belonged to their class formerly, having almost universally left the constitutions unchanged in form. The natural sympathy between priestly and democratical ambitions made the burghers of most Italian towns Guelphs ; and a contrary instinct among the German nobles made them Ghibellines. Amongst the latter the national feeling was to some extent real ; with the Italians there was none ; for the vanity of a worn-out race, proud of the civilization of its ancestors which it has lost, and despising all but itself as barbarians, is not nationality. The adherence of the people of Italy to the papal cause was not by any means universal. Taken city by city, one-third or thereabouts adhered to the Cæsar. But the predominance of democracy among the Guelphic cities, and that of aristocracies or tyrannies over the Ghibelline, is characteristic.

[There is an entire difference between these Italian tyrannies and the tyrannies which were established in many cities of later Greece and Magna Græcia. The Grecian were nearly all pure tyrannies, *i.e.* usurpations by successful military adventurers or the like. The Italian tyrannies were established when the party of the nobles overcame the populace, and placed their leader at the head of the state. They often lasted accordingly far beyond the lifetime of the usurper, the Visconti, for instance, for centuries,

and later, the Medici of Florence. The Greek tyrannies seldom endured two whole generations. When an aristocratic revolution occurred in an Italian city, the form of the administration underwent generally little or no change; the office-bearers were changed, the offices not. In like manner, the empire of Augustus was accompanied by no formal change; and in like manner the great revolution of England in 1688 was, in Burke's words, not a revolution at all (one not made but prevented). The Italian municipal governments descended to the nineteenth century; and this alone will account for the facility with which a general monarchy with representative institutions was formed, in great contrast to the case of Spain.]

The first of the points at issue between the Hohenstauffen emperors and the popes has an interest for the present time, in that there are analogies between it and matters even now open or not long closed. The nomination to bishoprics had practically been lodged in the emperors; but as no nominee to a bishopric can act till he is consecrated, the pope had the power of preventing consecration by his authority, provided he was obeyed. The great advances which had been made in the moral reformation of the Church since the time of the Othos gave the popes the moral strength which they required in entering on a contest which really was for sovereignty, seeing the great space which the Church filled in the whole social and political life of the time. The popes had a good practical case in general opinion, for the power of nomination in imperial hands was being systematically and notoriously abused; to that extent that, the celibacy of the clergy unenforced, there was a prospect of episcopates becoming hereditary, and not different from other imperial lordships. It was necessary, from the reforming view, not only that the power of veto should remain with the pope, to be actively used, but even that the nominations (investitures)

should be transferred to Rome, and the emperor left with a veto, to be enforced on peril of excommunication, by refusing investiture of the temporalities to the intended bishop. By the will of the Countess Matilda, the pope became feudal chief of a number of fiefs and sees in the richest part of Italy; and if successful in the matter of the investitures against the emperor, the latter would virtually cease to be an Italian power at all. After two generations of faction, intrigue, and war, a compromise, which is to this day the basis of the relations between the papacy and the Catholic states on the subject of vacant bishoprics, was entered upon. The right unquestioned of spiritual investiture was acknowledged in the pope, and the right unquestioned of temporal investiture in the crown. The nominal or formal victory remained with the former; but, as ages wore on, the practical power of nomination was lodged in the hands of the party at the time diplomatically the strongest. At a time long afterwards, the French kings entered on agreements with the papacy respecting the appointment of bishops; according to the latest of them the presentation is in the Government of France, with a right on the part of the pope to reject the nominee for cause shown. It has been a necessary consequence of this, that the Church of France has always exhibited a spirit of greater independence than any other of those in communion with the Church of Italy; developing within itself the school of Jansen, at one time supposed to include a large moiety of the clergy and educated laity. When, in the sixteenth century, a large portion of Europe revolted from the popes, the episcopate expired in some of the reformed Churches. At a later time, in consequence of reconversions, the authority, after a spiritual manner only, of the papacy begun to return; and the skeleton of the old organiza-

tion having been preserved, the old episcopate was re-established with but little difficulty. This being watched with great jealousy by the Protestant governments, two methods of dealing with it presented themselves. One was by open persecution. But as persecution of the intruding bishops involved persecution of the lower clergy, and in addition of the laity, this course was difficult. It was revolting to humane men, and did not tend to quiet. It was tried, in theory, in one memorable instance, and was never carried more than half into practice; and had at length, after various public misfortunes, to be completely dropped. The other mode of dealing with the establishment of this empire within an empire was prompt and open acknowledgment, and entering on agreements with the papacy by which the new ecclesiastical organization was brought into direct relation with the state, and enough under its control to hinder it from becoming an engine of disaffection and intrigue. In Prussia, this plan had a great success; uninterrupted till a period of weakness on the part of the papacy tempted the government to strain too suddenly the terms of the agreement. In contrast to the action of Prussia, England had neglected the opportunity, given by the relaxation and ultimate abolition of the popery laws affecting both herself and her principal dependency Ireland, to open relations with Rome, and in some degree at least to bring under the influence of the state the bishops and clergy who acknowledged the supremacy of the popes. Accordingly, a state of matters ensued which presented some strange and difficult positions. A vast and powerful organization existed, ignored by the law, and in full possession, consequently, of independence, forced by circumstances as well as by the law of its own nature to become a leading factor in politics. It could only be a trouble-

some factor, and was in daily danger of becoming an anarchical one. The power of applying the preventive of state support and state control having been lost, or having become very difficult to resume, a remedy was devised, borrowed from the example of the United States of America. The English state renounced, so far as affected Ireland, all direct relation with all ecclesiastical organizations and societies. Now, this system had seemed in America to have completely eliminated one whole class of political perplexities ; and what has been done in Ireland is so recent as to be yet a matter of experiment. There is this difference between the position of the Church of Rome in America and elsewhere. The extent and influence to which it has reached hitherto have been greatly and unexpectedly less in proportion than the number of persons of that religion who have domiciled themselves there warranted and made likely. It is said that the children of settlers in the United States are never Catholics of the same order as the settlers themselves, if they do not cease to be Catholics at all ; while in Ireland, the adherents of that Church are still three-fourths of the population, and the strength of their political influence not very different in amount. There are at the present time influences proceeding in the latter country which may eventually seriously undermine the social and political power of the priesthood ; and in this view, the experiment may possibly never be perfectly fairly tried, which was entered on when all religious societies were placed on the same level in their relations to the state.

At very nearly the same date that the papacy and the empire arrived at their final compromise in the matter of the investitures, another quarrel between the same was opened, involving an issue or issues quite as vital. The circumstances of Italy, a country frequently

overrun by foreigners during six or seven centuries, many of these foreigners having remained and formed separate communities, had destroyed all nationality except what may have lingered among the municipalities. The colonies, Lombard and others, were not in particular districts, and were not divided by geographical boundaries from the native people ; as communities they were often divided as entirely as if deserts and rivers separated them. They had distinct rulers and distinct laws and tribunals ; all being nominally, and more or less really, subject to the Cæsar. The idea and system of separate jurisdictions were to the dwellers in Italy, and here and there all over Europe, perfectly natural and accustomed. Where colonies or settlements of Europeans have been in modern times established in Asia, a state of things not unlike has in places been established. The Levantine consular courts are separate tribunals ; in India, Europeans are not subject to the jurisdiction of any but European judges. It was not unnatural, accordingly, that not only separate peoples, but also separate orders of men should have distinct systems of law for themselves ; and in this manner the canon law and clerical immunities were formed. But as Italian natives and Lombard colonists in process of time ceased to live separate, and as similar amalgamations of races went on in other parts of Europe, one national system of law predominated over another, or was absorbed in it.

[The most remarkable of such amalgamations was to be found in England, where the Saxon courts and the royal courts were combined. The complete history of this, the infancy of English law, can perhaps never be recovered ; but its results we know, not the least of them being that the Roman or civil law was never naturalized in this country.]

The canon law differed from the national codes in this, that it was incapable of being incorporated with

another system. The priesthood was to last as long as Christianity should last ; but it never could become part and parcel of the laity. It did not offend the ideas of the middle ages, and it did not offend the ideas prevalent in any time, till one long subsequent and far more advanced in every species of civilization, that the spiritual order should be judges in spiritual affairs. But when separate jurisdictions for the trial of ordinary disputes between man and man, and for the trial of ordinary criminals, were disappearing, it came to be repugnant that the clergy should, as private persons, be exempt from that good order to which all other men were subject. A contest began throughout all Europe between canon and ordinary law. It is curious that it was carried on in no country with so much acrimony as in England, where the Norman and Saxon peoples in the twelfth century had only reluctantly begun to unite in one nation ; and where the leading principle of the administration of justice was, and is to this day, that a man should be tried by his peers. The Guelph and Ghibelline quarrel, by the opening of this new dispute between Church and Crown, was prolonged indefinitely. It was not matter of doubt how it would eventually end. In the contest concerning the investitures, the papacy had morally a very strong position ; but in the matter of clerical immunities it had none whatever. About the commencement of the reign of Frederick I., in the Diet of Roncaglia, the laws of Justinian were adopted as the code of the empire, and the consolidation of imperial power acquired by this was overwhelming, slow as it was in operation.

[It is usual to regard the age of the Innocents (III. and IV.) as that at which the papacy reached the height of its power. By that time the popular support of which it had been possessed when an emperor had stood barefooted at

a castle-gate in the Apennines, and when a king had been scourged with rods before an altar, had ceased. It appears more correct to consider the period from Gregory to Alexander III. as the zenith of the popedom.]

In a country which at the time of the papal and imperial struggles was hardly included in the European system, but is now behind scarcely any in civilization, there occurred in the nineteenth century transactions which had to be referred to the same principles as men disputed about in the eleventh and twelfth. The establishment of the Free Church of Scotland was preceded by events which attracted less attention in England than their importance merited. According to the laws as established after the expulsion of the Stuarts, very slightly modified by subsequent amendments, the nomination to the parochial ministerial office in Scotland was lodged in the congregation, a right of presentation for approval subsisting in most cases in a patron, when there was a representative of the lord from whom it was supposed that the parish derived its endowments. The congregation could only nominate for their pastor one who had already been authorized by the proper Church authorities to undertake the ministerial office when called to it; and if they objected to him whom the patron presented, they had to submit their objection, with its grounds, to the ecclesiastical court of the district. Under this system a body of clergy had been reared, not inferior in virtue to any in the whole world, and probably more beloved by their people than any other that ever existed. About the year 1835, a change was introduced by the supreme legislative and judicial assembly of the Church, under which the congregation acquired the absolute right of rejecting the patron's nominee. It is not difficult, even at this distance of time, to trace the motives which led to

this enactment ; there can be no doubt of its popularity, and there can be no doubt that it was made at the instance of that party in the Church which was on the whole animated by the most religious zeal. According to the form, the congregation rejecting reported to the district court, with whom lay the function of conferring orders and inducting ; and they were bound to give effect to the desires of the people. It soon appeared that in making this law the General Assembly had strained the powers which pertained to it under those acts of Parliament which gave its constitution to the Church of Scotland, and their legal authority to its courts. The right was tried in a very memorable case, whether an entirely ungrounded objection was to be held sufficient. The Church courts held that it was ; the civil courts that it was not. Then the Church courts abandoned their right to judge concerning the temporalities of the living, and demanded that the civil courts should renounce the right of adjudicating on spiritual things. There are few things which excite party animosities more than conflicts of jurisdiction. It is to be noted, and it is very remarkable, that the most eminent Scotchman of that time, eminent as an orator, as a leader in the Church, and as a man of letters, and distinguished for liberality no less than for exalted piety, said that he held as of but slight account the change in the law of presentation which the assembly had made, but that he considered as vital the right of the Church to judge without appeal her own causes in her own courts and by her own laws. It is well known that, owing to misunderstandings on the part of statesmen, both Scotch and English, no reasonable compromise of the points of dispute was arrived at. To the sorrow of all but those who loved anarchy and vulgar excitement—to the sorrow of none more than of them-

selves—some hundreds of the most meritorious clergymen in Scotland quitted the noble Church of their ancestors, and established a new ecclesiastical society of their own. In this manner, different from any that was possible in the Middle Ages, a contest very similar to that between pope and emperor concluded; for the ideas of men in pre-Reformation times did not admit of the existence of any religious society apart from the historical Church. In other points than in the conclusion, with the similarity, there are contrasts. From the time when Henry V. was elected to the imperial throne till the pope consented to the investiture of the bishops with their temporalities with the ring, was more than fifty years; whereas from the first motions to alter the Scotch law of election to benefices till the secession, was less than ten. In objecting to the patronage of the crown, the popes were able with truth to say that it had been often and mischievously abused; but it does not appear that any such accusations were ever made against the patrons of livings in Scotland; there is, in fact, reason to think that the object of the veto law of 1835 was to multiply the number of the less liberal, but perhaps more zealous, class of ministers. In choosing bishops from among the body of the priesthood, whoever chose them was bound to consider the fitness of the men chosen; and the pope was making no absurd assumption in thinking himself more competent than the emperor to make a proper election. It was not so in the appointment of the ministers; none could be presented by the patron for the approval of the people except such as had been specially educated for the office, and approved as eligible, and, though not ordained to any special ministerial charge, actually licensed to exercise the chief ministerial function by the ecclesiastical authorities. The claims of the priesthood

to personal immunities, which were put forward in the twelfth century, and some traces of which did actually survive in parts of Europe into the present century, were not of the same nature as the claims of the Scotch Church Assembly to be absolute and final judge in its own spiritual affairs. It is always matter of political expedience what and what kind of such immunities and jurisdictions shall be admitted; and there is in all circumstances political danger in granting such to an order of priesthood. That order is beyond all others ambitious; not that each individual is personally and selfishly so—perhaps as a class they are less so than other men—but the order is ambitious of power for itself. To admit of personal immunities is accordingly, mischievous as it is, a less danger to the good order of society than to recognize an independent judicial power residing anywhere else than in the state. The Archbishop of Canterbury and his monks, who opposed the limitations to their ambition effected by the enactments of Clarendon, were abundantly obstinate, supported as they were by such democratic instincts as were then alive, and by the jealousy of the Saxons against the Norman rulers of England. They were imitated with a not inferior degree of obstinacy by the leaders of the Scotch secession, who exhibited in addition an impatience of compromise, and a passionateness, in which they were joined by a vast proportion of chiefly the uneducated part of the people; compelling the conclusion that democratical instincts were a large cause, if not the radical ground, of the whole disastrous proceedings.

It is, at a distance of forty years, not too soon to form a mature judgment on the policy which resulted in the establishment of the Free Church. It had its root in the fanaticism which underlies deeply the Scotch character; and it was largely aided by the jealousies of

a half-educated populace against a more cultivated aristocratic class. The seceders carried with them a great portion of the virtue, and a majority of the zealousness, of the Church; but they left behind them a great preponderance of the intelligence and culture. The historical Church reeled under the shock of the amputation; but it cannot be doubted that by this time, far longer than a generation since the event, it has redeemed its position in the affections of the best part of Scotland; while the new religious society has declined and is declining, and has already sunk to a low intellectual ebb.

The predominant characteristics of the papal and imperial, or, to give them those names by which they were known even later than the fifteenth century, the Guelph and Ghibelline parties, were the leaning of the former towards democracy, and the disposition of the latter to strengthen itself by aristocratical support. These dispositions or proclivities are in their nature permanent. An aristocracy proper, that is, one that rules and not one that is merely privileged, must be animated by a jealousy of a spiritual aristocracy; and such a one, in all except times of dark general ignorance, is necessarily superior in all that is called culture both to the priesthood and to the mass of the people. No priesthood can be much above or much below the level of intelligence of the people and preserve its influence; whereas the higher an aristocracy is above them the greater its power and the more commanding its influence. When the Reformation came, which was a development of the Ghibelline principles, it had its strength in the educated classes, though its origin was in a monk's cell. In Germany this was the case less markedly than in England; and in England than in France; for the great majority of the nobles in the

southern half of that country was Huguenot, and the strength of the Reformation was gone when they were subdued. No Italian city ever had so Guelfic a mob as Paris—that guilty mob which obeyed one king when he ordered them to kill, and shut the gates of their city against another because he did not own the pope. There is one instance of a close alliance and affection between an aristocracy and a priesthood; those of England, in later times; but this is because of all Churches that ever existed the English is the most Ghibelline.

[The changed attitude of the landed gentry of England towards the Church, which dates from the return of Charles II., is very remarkable. They looked on its restoration as the restoration of liberty, prostrated under Cromwell and the republicans. This feeling lasts to the present day, and at the time of James II. it burst out most strongly, being the chief factor in producing the revolution. A complete history of that event has not yet been written. The most recent, that of Lord Macaulay, makes far too much account of the attitude taken by the Dissenters, and almost ignores the great importance of the effect on the progress of affairs produced by the general belief that the Prince of Wales was a supposititious child.]

The intimate connection between the landed gentry and the Church, produced by the prevalent system of patronage, and the consequent large numbers of the clergy who come from that class, has confirmed largely the Ghibelline tendencies of the English Church. The suppression of the convocations for a period of more than a century has in addition largely advanced those tendencies.

The conclusion to which all statesmen have come, that no absolutely separate and independent jurisdictions shall be allowed, is the product of a very advanced state of civilization; one in which the science of jurisprudence approaches to completeness. It was not evident, and

could not be evident, to people living in the Middle Ages, that Churchmen are not the most competent to be judges in matters affecting the Church ; on the contrary, it appeared to them, as it would appear always to most of the uninstructed and inexperienced, that they are. The reason that all disputed matters between man and man, and between societies and societies, should be submitted for final adjudication to state tribunals, and not to particular tribunals, is that the judicial faculty is to be acquired, not by the study of special subjects, but independent of such study. Experts make the best witnesses ; and for that very reason, the worst judges ; they worship always the *idola tribus*. It is not necessary that there should be no separate (or special) tribunals ; the existence of such is often useful, and even necessary ; but it is necessary that all of them should be subordinate to the highest in the state.

The great Guelph and Ghibelline quarrel produced many great men ; statesmen and warriors, whose characters and actions make the history of their times attractive and interesting to ours. It is not possible to say which party was the most prolific of those whom it is no exaggeration to call heroic. Gregory, St. Bernard, Becket, and Innocent III., were Guelphs ; Godfrey of Bouillon, Barbarossa, and Frederick II., Ghibellines. That man, too, who left his mark upon the literature which belongs not to a nation only, but to mankind—Dante—was a Ghibelline. It was late in the day that he began to be prominent in the Italian commonwealth ; a time when party in its grand and noble sense had begun to be superseded by mere faction ; but in his poem, the greatest imaginative work in all ancient and modern literature, we find the purest piety, the most perfect impartiality, and the most perfect reverence for beauty, moral and physical, as well as for

justice and right. See how, in the sixth canto of the "Purgatory," lamenting over the anarchy into which his country was sunk, he denounces not the lawlessness only of those Guelfi Neri from whom he had personally suffered, but the oppressions of the nobles under which others were ground down; and listen to his passionate appeal to the new emperor, from whose authority, imposed after a gloomy interregnum, he anticipates the revival of order and the reign of Justinian's righteous laws. It is no inconsiderable thing that the greatest intellect of the Middle Ages was an imperialist; as it is no inconsiderable thing that the author of the sublimest hymns addressed to the common God of the Hebrews and the Christians was a king and not a priest.

From time to time, differences between the secular and the spiritual powers, differences the principles of deciding on which are the same that existed in the twelfth century, have arisen, and will continue to arise, as long as the papacy shall exist. One of the characteristics of the papacy, and an essential one, is its enmity to the liberties and peculiarities of national Churches. So great is this enmity that it is not too much to say, that the papacy is an essentially anti-national thing, and as such, anti-social. The Christian economy, derived as it is from the Jewish, in which economy what may be called the national element was most potent, has shown itself capable, and more than capable, of uniting itself with national instincts and aspirations everywhere; and this although, from many of the expressions in the Christian Scriptures, such union appears contrary to its genius. In this the papacy presents an opposite; in so far following the course pursued by all fanatics, and fanatical systems, of attempting to reduce everything human under mechanical and apparently symmetrical, instead of under organic laws. In particular,

the papacy has opposed with vehemence the political development of its native Italy, brought into national unity late in the nineteenth century; an opposition which has been almost ludicrously inconsistent with its own policy, for during some centuries no head of the Italian Church has been elected except an Italian. This policy, however, has been in other respects very consistent; for the studied depreciation of the nation has followed evidently from the stigma cast upon the family by enforced clerical celibacy. The sympathy between the papacy and democracy of the anarchic kind is not to be observed at all so frequently in later times as in the twelfth century; but the chronic example of Ireland, and that of the Belgian revolution of 1831, show that it still exists, as ready to spring into violence as ever. When the Churches of the north of Europe, at the Reformation, were freed from the authority of the popes, the new order established was so different from the old, that it is in but few cases that the relations between Church and state, in Protestant countries, have similarities to those which had formerly subsisted between pope and king. In most of those countries the authority of the pope over the Church was transferred to the crown; this occurred in Germany and in England, where the religious revolution was accomplished in process of law and order. It was also so accomplished in Holland, though at the cost of a war of political independence. In Scotland the Reformation was more of a popular act than anywhere else; and the Church, as then newly organized, acquired from the beginning a degree of independence greater than in all other states. It is to that independence that the events which led to the secession in the present century must be ultimately referred. An opinion prevailed in England in respect of them, which was derived from

knowledge of the events of the times of the Stuarts, that a necessary connection existed between this independence, with the state of men's minds which it produced, and the Presbyterian form of government that belongs to the Scotch Church. A reference to the freedom which Holland has enjoyed from Church and state differences is enough to dispel this error. The example of Holland, if an example at all, is one the other way; for the clerical party there, during the political contests of the seventeenth century, sided with the House of Orange and the democracy against the aristocratic corporations; and was never a disturbing force in the state.

The great and peculiar interest which attaches to Italian history during the Middle Ages, arising from the contests between the temporal and spiritual powers, is transferred to the history of England since the sixteenth century. On the closing of the main quarrel, new subjects of difference grew up. Some of them were such as to open matter of controversy in all Protestant states; the bringing of the laws into conformity with the newly acquired religious liberty, and what the extent of that liberty should be, involved questions for solution common to them all. In addition to these, the rise of religious dissent introduced a set of problems in England peculiar to that nation; for in other countries it was almost unknown, and is still rare. There were in Holland dissensions in the Church, but no separations from it; and the meaning of the term dissent is generally understood to include the formation of religious societies, separate from that which is established. It was universally and unquestioningly recognized, in Protestant states, that religious and ecclesiastical administration was a matter naturally under the control of government; or, in the

language of the nineteenth century, that religion was properly a department of state administration. It is not necessary to examine what were the minutiae of the theories on the subject further than this, in other countries; but in England, the view taken by the first generation of reformers, and preserved more or less to the present time, is of interest both historically and practically. Henry VIII., Cranmer, and Burghley appear to have regarded the commonwealth of England, in its capacity of a state, and in its capacity of a Church, as one; that is, they looked on the state as being not merely conterminous with, but identical with, the Church. It is doubtful if such a theory could be maintained in any Christian country without a break. In a Mahometan state it is more conceivable; for there the religion is the very foundation of the state, and of allegiance to it. It is also conceivable how this theory might be maintained in the first age after the Reformation, although imperfectly; for, not to speak of other inconsistencies which it involves, let the case of a foreigner be taken, who, coming to live in England, entered at once into full communion with that division of the universal Church which he found there, without thereby becoming a subject of King Henry, or King Edward, or Elizabeth. Immediately on the formation of Dissenting societies, the inconsistency becomes still more manifest. It is true that the carrying into effect of the theory, by prohibiting the formation of such societies—later on, when the societies could no longer be ignored, by refusing the rights of citizens to their members, and at all times by permitting the members at any moment to enter into full enjoyment of their privileges as commonwealths men, both in Church and state—might go forward with more or less plausibleness. The conception, however, rests upon a fallacy, or at

least rests upon the ignoring of certain facts. A man belongs to a commonwealth, and has duties towards it, and rights derived from it, from the nature of his position ; and those duties are not voluntarily assumed, but belong to him necessarily, inasmuch as he cannot live in a society independent of them. His membership of the Church is not so ; by its very nature it is voluntary ; or if it be enforced, such enforcement is a practical contradiction of the principles of the Christian religion. Though all this is true, and is at this time all but universally believed, the idea of the first English reformers influenced both thought and legislation to a very great and remarkable extent ; and the remains of it are still operative, although no doubt in a halting and most incomplete manner. It is because the constitution of the reformed English Church is a compromise, that there is so much dissent in England. The more zealous reformers desired a greater assimilation to the continental Churches ; and Burghley and the statesmen of Elizabeth's time exhibited, in trying to apply their impossible theory, a blindness to the more than difficulty of staying a great movement of the human intelligence. They took, as there is on all sides reason to make us believe, the constitution of the Israelitish Church and nation as a model. There they found the state and the Church identical ; a state of things which has been minutely imitated only in the Mahometan countries of the East, and which experience at least proves not to be adaptable to Europeans, and probably not to Christian communities anywhere. It is some palliation of this error, that in obeying their model they were doing similarly to what the more forward reformers were doing ; who, rejecting one of the leading principles of the Hebrew constitution, were unceasingly making precedents for action of particular instances in the Hebrew history.

The second great compromise in English history, the establishment of the liberty of dissent, without at the same time overthrowing the empire of the state over the Established Church, has now lasted nearly two hundred years; the only practical remains of the theory of the unity of Church and state being, that the state lends its force to its subjects in preserving their Church rights, as being inherent and not derivative. Otherwise, the idea of religion and religious administration being properly a department of the state, has vanished into nothing more completely in England than in the Protestant states of the Continent. That important branch of the whole subject of religious freedom, which has reference to the authority of the state over the minds and consciences of men, contains now, in general opinion, absolutely no arcana. It is evident to every one that the swallowing up of the individual conscience in the conscience of the society would be totally destructive of all individual independence. It was first seen that it is impracticable; then, that if practicable, it is inexpedient; and then, that if expedient for some objects, it is contrary to good morals; lastly, that it is contrary to the rights which the Creator designs that all men should enjoy. It is remarkable that mankind is largely indebted for the development of this political truth, now regarded as fundamental and indisputable, to the historical descendants of those extreme Puritans who had certainly very different opinions; and the present generation of those descendants appear disposed to apply it, or deductions from it, in a direction which their predecessors would have thought of only to repudiate. They, or a number of them, hold that for the state to retain such relations with ecclesiastical societies as exist in England and in most European countries, is directly or indirectly an interference with

the independence of men's consciences, of the same kind as the old laws which trammelled them, that received their death-blow in the seventeenth century here, and in France at the great revolution ; and that complete religious liberty requires the breaking of those relations. Religious liberty is to be defined as the state in which that man is, who is free from control and not subject to disability on account of his religion ; and religious equality is that condition of equality before the law and courts and tribunals of all kinds which a man is possessed of, when he holds it independently of what religion he may profess. Now, religious liberty and religious equality are rights of men, and not of societies. The liberty of a society resides in its free exercise of power over its members ; and the very first steps in the development of religious liberty were taken to deprive the society of power over its members, or to limit that power. Much more is to be said in favour of the fairness of the claim of voluntary and independent religious societies to equality with the established religious society. The former are able to maintain, with more than plausibility as to the fact, that the existence of a connection with the state such as is involved in an establishment, acts as an encouragement to men to adhere to it at the cost of the voluntary societies. They are able to urge, with reason which it would be impossible to call valueless, though it may be erroneous, that this is a case in which the law of natural selection should be allowed to run in free course ; and at least to insist, without begging that question, that the burden of proof is with those who would reject that law as applicable to this case. They are not taking an untenable position when they deny that the fact of the Established Church being established, and of there being dissenters from it, gives its position a complete logical defence. They can point to the

success of the voluntary system in America, where the dissociation of the Church from the state has not brought after it what many may have dreaded, the bringing of religion into discredit. Other reasons against religious establishments are advanced; one in particular which, if the charge against them were correct, would be overwhelming; viz. that they are a mode by which a majority in number, or a strong minority, tax the whole community for the benefit of a part, and to advance its special religious opinions. There is an expectation prevalent, not amongst religious Dissenters only, that the cessation of Church and state connection would get rid at once, for ever and altogether, of a set of practical political difficulties. And there is a deep sentiment, which, though incapable of being reduced to exact logical expression, is not the less entitled to weight, that the secularization which the Church is supposed to undergo by its connection with the government weakens its moral and spiritual efficacy. These considerations are entirely outside of any which have their origin in an historical and social jealousy on the part of Dissenters against the Established Church. Such jealousy is a factor of importance in political and party contests, and is not to be ignored or undervalued if the practical utility of an institution is to be measured, and that utility to be estimated with reference merely to considerations of a temporary or local nature. It is not of like importance in enabling a judgment to be formed of the general public policy of an institution, and of its effects on the national and social life; and it bears still less on the effects which are unquestionably produced on the intellectual life of society by a national Church. At the present time, and during any time since the accession of the Hanoverian House, the Established Church has rested for support on the pre-

dominant conservative instincts of the people, rather than on the strong attachment which armed a large part of the nation to fight for it in company with an unpopular and despised monarch; it rests, too, on an enlightened conviction amongst the majority of the educated classes of men, that it is a good thing of itself; and it derives a good deal of passive strength from the partiality of many who prefer a Church with less zeal than voluntary Churches, as they suppose, are animated with.

[There can be no doubt that the cavaliers took up arms far more for the Church than for the king. The desertion of the king at the time when he left London was almost as general as the desertion of his cause during the six months before the Parliament met. It was in the interval between the departure of the king from London and the raising of his standard that the attack on the constitution of the Church was developed. Only the large half of the aristocracy and gentry was royalist; and even their attachment to the Church was weak compared to that of the succeeding generation. They had not forgotten the Star Chamber and the Court of High Commission.]

In case that the present century shall see a regular Parliamentary attempt to dissolve the union between Church and state, it will be an assault of a quite different character and nature from what occurred in the time of Charles I. The Puritan party wished for the reformation, not the overthrow, of the Church. The political and religious movements of that time, in their early stages at least, did not run parallel with any democratic movement; nor were the conservative instincts of the king's friends allied with aristocratic proclivities. Roundhead was a term of contempt for a Puritan, not for a low fellow; and to be a republican did not include being a democrat. Whereas, if the establishment of the Church is abolished in this genera-

tion, it will be the result of the efforts of those who have a speculative hostility to it, working on the democratic jealousy against a Ghibelline Church; and—strange inconsistency—they will be aided by that party in the Church itself which comes nearest to the school of Laud. Those speculative objections are founded on a recognition of the profound truth, that things secular and things sacred are different; and on a deduction from that truth, more specious than logical, that the religious society should not have relations with the political society. But though things secular and things sacred differ, the boundary which lies between them is not a line, but a region; and the religious society has worldly interests, and the political society has moral, and therefore religious duties. Moreover, the position that the Church should have no relations with the state can never be an axiom, for the Church must have relations with the state; every religious society has property, or has property held for it by representatives; and it is and must be subject to the jurisdiction of the state in questions concerning such property. Every religious society has laws or rules to govern its affairs and members by; and it must be subject to ordinary law when matters in dispute arise as to the construction of those rules, and as to the nature of the contracts between its members. That Church, which is regarded as the most dissenting of the Dissenters, the Society of Friends, or Quakers, was afflicted with a schism, chiefly confined to its American branch, about sixty years ago; and although it is a rule amongst them that their disputes of all kinds shall be settled, not in ordinary way of contentious law, but by arbitration from their own body, a series of lawsuits ensued, in which the American courts had to decide which of the two contending parties held real Quaker principles. It is the practice of the Friends, in

their corporate capacity, from time to time to deliver and personally present addresses to the crown, on the occasion of the accession of a sovereign, the birth of an heir-apparent, and the like; in which they declare in becoming language their loyalty, and their attachment to the principles of that religious liberty which they enjoy under our laws. It is a standing recommendation of that society to its members, to abstain from participation in political affairs; which advice they have often, it would be cruel to say inconsistently, actively set at naught. None were more zealous than the Quakers in procuring the prohibition of the slave trade, and the abolition of West Indian slavery; and it is doubtful whether the African race is indebted most to Wilberforce, the orator, or to Clarkson, the man of business, of that movement. The history of the Free Church of Scotland contains a curious episode. A certain minister came under the censure of his presbytery; and on appeal to the supreme court of the Church, was deposed. He brought the matter before the courts of law, pleading illegal action on the part of his judges; and that Church, which was instituted to vindicate a right to judge its own causes in its own courts by its own laws, suffered a judicial defeat. There have been fanatical sects which have held that, in becoming a Christian, a man ceases to be a citizen; which absurdity is as deducible from the position that the Church ought to have no relations with the state, as that position is from the evident truth, that things sacred and things secular are not the same.

It appears, therefore, that in deciding whether the present Church establishment shall continue, the question will be, not whether the Church shall have relations with the political society, but whether the present relations shall remain as they are or be changed. And

this is a question of expediency, and not of right and wrong. When an institution is erected, or, being erected, is maintained, at the general cost, for the benefit of a minority—or for the benefit of a majority, even a small minority being excluded from its benefits—it is contrary to evident justice; and the injustice ought to be repaired, either by the suppression of the institution or by some expedient compromise. But an institution which has been inherited, established at first and still maintained for the benefit of the community as a community, and so of all its members, is to be continued or modified on grounds of expediency alone. The objections to an established Church, grounded on erroneous ideas of what is required in order to carry out perfect religious equality, accordingly fall to the ground; for though the fact of its recognized connection with the state is certainly calculated to attract members to it, this, if for other reason the connection is beneficial to society, is not a necessary evil, but a consequent good. On the other hand, all objections against the severance of Church and state, based on such severance “unchristianizing the community,” are of no practical value, even were they true. The United States are not an unchristian country because they leave the concerns of religion to voluntary societies; nor is Ireland, where in recent times the Church of that country was deposed from its position. On the contrary, it is known that many men desire the separation of the Church of England because they are filled with a strong conviction that this would advance its highest interests and the progress of true religion. There are various things in the present constitution of the English Church which, in the event of its disestablishment, would necessarily be altered. One of these is the present system of patronage, if the various

modes of making appointments to parishes is to be called a system; another is the present mode of nominating to bishoprics by the crown. Probably more objection is felt against lay patronage than against crown nominations to bishoprics; and the dislike of the power of buying and selling advowsons is very general, not among Dissenters only. The origin of lay patronage, that is in most cases of the right of presentation going with a certain estate in land, was, of course, in times which are almost prehistoric; and the custom came from the fact in some cases, and the theory in all, that the tithes which support the minister were the gift of the landowner, who, as a reward for that gift, obtained the right of presentation, and bequeathed this right to his descendants with the land, or perhaps transferred it to his assigns. Suppose that at the present time a rich and liberal member of the Baptist Church builds at his own cost a splendid chapel, and makes it over with an endowment in the usual way to trustees for the use for all time of a Baptist congregation; it would be very surprising, and would produce very caustic remarks on the ungrateful and invidious proceeding, if the trustees and the congregation did not pay great deference to the wishes of the donor in the choice of a minister; and it would not be at all remarkable, if, on the death of the donor, and his son continuing the father's interest in the affairs of the Church, that son succeeded to the consideration which the father had enjoyed. Such a case differs in no essential from the custom of lay patronage; the fact of lay patronage having gradually by custom, and at length by legal decisions and enactments, obtained permanency, does not constitute an essential difference. These considerations will show that there is nothing in the system essentially wrong, or even unnatural; and the system ought, therefore, to

be judged by its results. Respecting the power of buying and selling rights of presentation, and the consequent possibility of those rights falling into hands which will abuse them, this appears to be an unavoidable evil. An enactment which would prohibit the sale of an advowson, separately from the estate to which the advowson from time immemorial has been attached, is possible; but such a law could be easily evaded by cutting up the estate; and such sales could practically never be prohibited at all. Any property the ownership of which carries a privilege will command a higher price on account of that privilege; and there is no middle method between the abolition of lay patronage and its continuance with the right of sale. The enmity of the Presbyterian Churches to patronage is based on the fundamental principle of the constitution of those Churches, that the right to choose ministers shall be in the congregation; which principle, in the Church of Scotland, is carried out with a very few exceptions, where the nominations are in the gift of municipal corporations. In the event of the Church of England being reorganized, it is probable that popular election would be adopted; or, if not adopted universally, that it would be mixed with episcopal patronage in a larger number of parishes than are at present in the gift of the bishops. Ordinary lay patronage, and that of the crown, would certainly cease; so that a large addition would be made to clerical power in any event, as popular election is much more favourable to the admission of that kind of influence than the existing systems.

The course of trade having been emancipated from Government control by the abolition of the Corn Laws, and the previous and subsequent alterations of the protective laws, it seemed to many persons that religion

should be similarly dealt with ; and the burden of proof may not unreasonably be held to reside with such as dispute that the law of natural selection should be allowed free course in permitting a rivalry of religious societies, and a rivalry of individual ministers, like that which exists between those in the same trades and manufactures. In order to show that strong reason exists for doubting whether a system of popular election would produce the best ministry, a mere reference to the qualities which majorities of congregations would be likely to appreciate is sufficient. Some would admire eloquence, perhaps not always the chastest ; some, piety or its externals ; some, that vague and shifting thing which is called orthodoxy ; some, the business talent, certainly most valuable, which enables a minister to administer a parish to the contentment and advantage of his charge ; some would prefer one who would be willing to accept a small stipend. Few would value profound learning and high intellectual qualities. The standard of ministerial excellence would be almost certain to sink. If a comparison be made between the clergy of England and those of Scotland, the superior educational advantages which the former have enjoyed will not be enough to account for the difference between the two classes. It is probable that the enforced democratization of the Church, in the event of its separation from the state, would receive a considerable impulse from the political circumstances under which alone that separation is likely to be brought about. The application of the law of natural selection which is contemplated would, it may be not unreasonably supposed, tend to produce a high degree of ministerial excellence of certain kinds, but not of that manifold kind which it is by experience the tendency of a manifold and historical organization to

produce in the greatest abundance. Respecting the application of the same scientific law to the various religious societies which exist, and which the proposal is to place on the same footing in their relations to the state, none of them, except the Roman Catholics and a minority of the Anglicans, make it an object of their existence to multiply the number of their converts; and in this view there is not an analogy between the case of religious societies and the case of trading societies and traders. In another view there is none either. The free trade legislation was the emancipation of industry from attempts to force it by regulation and enactment into unnatural channels; it was not the emancipation of trade and industry from control. The year after the Corn Laws were repealed, the Factory Act (the ten hours) was made law; and since then regulating laws respecting various industries and respecting various trade relationships have succeeded one another in such number, and with such an amount of interference, that many are beginning to fear that the system is being carried too far. Concurrently with this, two vast departments have been added to our administration. Forty years ago, it was generally thought that education was a matter that should be left to the voluntary system; and if, at that time, a department of science and art had been proposed, people would have asked what would be its use, and even what its functions. It is to be considered, further, that, in renouncing the function of controlling the course of trade, the legislature has not given up the control and regulation of trading companies; there is indeed one class of trading companies and traders whose operations are surrounded with minute interference—those bankers who circulate notes. The state has even established one institution of this class, and

given it certain privileges and powers, and a certain monopoly; imposing stricter control over it than over the rest like it. It is true that this may be held to be in opposition to sound principles of economy; but there is no moral objection capable of being made to the establishment of the Bank of England. If the state is to have relations with everything except religion, there must be something exceptional between religion and everything else. And so there is. A man's religion is between himself and his God. But his affairs as one of a religious society are between him and his fellow-men.

These are considerations respecting the effects which the separation of Church and state would be of a nature to produce on the Church, and therefore indirectly on society. There are other effects which would not be disadvantageous. When the Church of Ireland, in 1870, was placed in its independent position, the same act of Parliament which imposed the terms of separation gave the Church facilities and powers to organize itself in a manner suitable to its new circumstances, and enabled the crown to incorporate its representatives for the purpose of holding property. In the event of similar legislation being applied to the English Church, like provisions would have to be made. Under the action which would require to be taken, it is probable that the convocations of the two provinces would be remodelled, and that those assemblies, which are at present utterly empty and hollow, and therefore useless and presumably mischievous, would become active realities. Diocesan synods would be instituted; the powers of the ecclesiastical commission would be transferred to an elected board; all that machinery of Church unions, Church congresses, etc., which at present affords a vent for that pettiness and make believe to be busy activity which is very characteristic of voluntary

societies, would be succeeded by a new organization, and lawful assemblies would be invested with a dignity which is proper to such ; a healthy and vigorous life would be imparted to the ecclesiastical body politic. Schism and disruption might be threatened, as they were in Ireland, where nothing came of it.

The most important indirect and permanent effect of disestablishment—an effect which would not, owing to the nature of the case, begin to manifest itself till the second generation—is that which would be produced on the independent personal character of the clergy. That acute and wise philosopher, the late M. de Tocqueville, makes some pregnant observations on the alteration which the revolution has worked in the character of the clergy of the Gallican Church. Before the revolution, that Church was the most free and the least ultramontane of all those in communion with the Italian ; and it is by no means so now. De Tocqueville attributes this chiefly to the changed position of the clergy in regard of property. The curates had their tithes, and the bishops their rent-paying estates ; and were by their property brought into social relations with the people other than their purely ministerial relations ; they were citizens having the same kind of interests as their fellow-citizens. Now they have no property, but they have salaries ; and their tendency is to be priests and nothing else ; looking up, the curate to his bishop, and the bishop to Rome. There can hardly be conceived a machinery more calculated to develop personal independence than that which prevails in England ; the clergy nominated under a varied system, the great majority of the nominations being in laymen's hands ; and their position assured by law as certainly as a man is assured in the possession of his goods. And while independence is guaranteed so completely to the clergy,

it is accompanied by almost the smallest amount that is possible of power; and in proportion as clerical power is an evil, clerical independence is a good. There is, accordingly, no body of clergy in the world who are less uncitizenized by their priesthood than the English. So complete is their identification, since the final extinction of the Stuart claims, with the body of society when political questions are at issue, that they have imparted the same disposition to their brethren of the Dissenting Churches; and now, for a clergyman to assert his priesthood as a reason for his being a political authority or guide, would be to provoke laughter. Very different this is from the stand assumed by the voluntary Roman Catholic clergy of Ireland, and the ultramontanes of Belgium and France. The English clergy have often been charged with a too great subservience to the powers that be. No such accusations, whether they be of factious support of power, or of turbulent opposition to it, are ever made altogether without grounds. As applied to those of the times of Marlborough and Walpole, and as applied to those of the present generation, they are not very easy to substantiate; and though, during the period of the American and French revolutionary wars, the clergy were with but small exception Tory in politics, it may be doubted if they were more so than the bulk of the society of which they were part. On one great occasion, when the liberties of England were or appeared to be in imminent peril, the clergy stood forward as defenders of law against illegal assumption, in a way which earned the gratitude of their contemporaries and the applause of succeeding generations. What is very remarkable in the refusal to read the declaration of King James, is that their action was taken not in their character of priests, but in their capacity as citizens.

There is in England, and has been for some years past, an association called "The Society for the Liberation of Religion from State Control," which is said to be advancing in influence and activity. It is composed of various elements, the principal being those Nonconformists who object to a union between the state and any Church by way of establishment, and concurrently, of course, object to the general legislature and the public courts of law being the legislature and judiciary of the Church. Some of the Nonconformists are the legitimate political descendants of those of the seventeenth century, who, soon after the return of Charles II., were driven from the Church by high-handed legislation, and an administration of it which is open to the reproach of culpable carelessness, if not of fraudulent trickery. More of them probably think that the abolition of the present establishment is required to carry into practical issue a theory embodied in the phrase "religious equality." Others believe that the Christian religion suffers by the union of the Church with the body politic, and have no special enmity against the Anglican Church, which they believe would be strengthened for all proper and good purposes by acquiring independence and what is supposed to be liberty. With these are joined many men who do not profess Christianity at all, and are animated, some languidly and some zealously, with enmity against the Church as a support of opinions which they think false. There are also Roman Catholics, who have always hoped for the reconversion of England; and, disappointed of the hopes created by the movement of Cardinals Newman and Manning, and especially disappointed at the small effects which that movement has produced, have given up all expectation of ever seeing the Church return, as it did once for a moment under Philip and Mary, to allegiance to Rome. Another com-

ponent of the Liberation Society comes from the Established Church itself; more significant than the others, if not of more importance and weight. That school of theologians who come nearest to Archbishop Laud, seeing that the great political power which the priesthood exercised under his administration can in all human probability never be revived, desire above all things to recover another form of it by setting the Church free from state control. It is said that most of the younger clergy of this school, probably one-eighth or thereabouts of the whole clergy, are very decided democrats in politics; they are zealous in doctrine, active in ministerial work, and exemplary and even devoted in life and manners. They are, in short, Guelphs. The above, if too ample a description of the association, is a correct one of those various forms of opinion, which, acting parallel with the supposed hurrying and innovating democratic instincts of this time, are preparing the path for a formal political assault against the British constitution in Church and state.

The most worthy of note of all the various Liberationist elements is this last spoken of. The disciples of Laud never wholly ceased from out of England. Atterbury, Secker, and less certainly Butler, had much in common with Laud; the first of these in temper as well as in thought. John Wesley had much more in common with that school than with either the Cambridge Platonists or the followers of Burnet and Tillotson. One of the greatest laymen of the eighteenth century, Samuel Johnson, eminent in literature and influential in society, differed but little in religious and ecclesiastical opinions from Laud, and resembled him in many curious, though minute, personal particulars. The religious views of Edmund Burke were eclectic, but he reproduced the High Churchman of the seventeenth century

as much as he anticipated the Broad Churchman of the nineteenth. Mrs. Hannah More, a woman of rarely original and liberal mind, was not very different. One of her intimate friends, Alexander Knox, a gentleman chiefly resident in Dublin, educated much under Methodist influence, adopted theological opinions very near to those of Laud, his temper and mind otherwise resembling such men as Bishops Cosin and Ken. He deliberately devoted the last thirty years of his life, which were the same as the last thirty years of Mrs. More's, to the study of theology, the writing of letters and tracts, and the cultivation of his great social and conversational powers, for the express purpose of impressing his opinions on his friends, and on society through them. Dr. Jebb, Bishop of Limerick, was his ally. The foregoing are but instances; and without doubt they are not the only ones which could be found; they are enough to let it be perceived that the public mind was not unprepared for a movement, which would be certain to traverse that in which the most conspicuous intellects were those of Wilberforce and Simeon. All that went on by writing and conversation was not, however, of an overt nature. The first public act which announced to the whole public that a Laudian or High Church party was reviving was Dr. Marsh, the Bishop of Peterborough, refusing orders to candidates whose replies to certain queries did not repudiate the Calvinistic theology. This was in 1822. Owing to the discussions then and for some years later proceeding on the subject of the repeal of the remaining anti-popery laws, great attention was paid, chiefly in university circles, to the old doctrinal controversies between the Italian and Anglican Churches, the study of which made it to be recognized more extensively than ever before, that Calvinism is rather a graft on, than an indigenous

growth of, the latter. So the Oxford movement began. It may properly be divided into three periods; the first, from its formal origin in 1833 by the commencement of the well-known series of tracts, to 1845 or thereabouts, when several of the more zealous of its disciples dissented to Rome; the second, during which these departures went on slowly, but were more and more reprobated by the leaders of the movement, till a very evident, and no doubt sincere, though not very warm, reconciliation took place between the High Church and Low Church (or Calvinistical) parties, who united, in sentiment at least, in hostility to the new and so-called rationalistic schools; the time since which, about 1865, forms the third period. The men of this, or third period, which is the one which has a direct political interest for us, are a completely new generation; they have broken off from the moderation by which the older Tractarians were favourably distinguished, and are called by the distinct and sufficiently appropriate name of Ritualists. If the late Dr. Irons was right in calling the Tractarians the reformers of the nineteenth century, the Ritualists may be said to bear the same relation to them that the Anabaptists did to Luther. That party outdoes Laud in attempts to Romanize the English Church; they introduce innovations in ceremonial and vestments, under the pretence, correct or the reverse would appear not to signify, that they are ancient practices; most of these changes are intended to be symbolismes, which may have had some meaning in ages when not one man in a hundred could read, but which are utterly unmeaning and useless, if not ridiculous, now. They favour clerical celibacy; they recommend auricular confession; their teaching concerning the Eucharist is not easily to be distinguished from transubstantiation; and, above all, their attitude

towards the courts of law which have jurisdiction over them is little short of rebellion. While their system is profound and consistent, there are, it is evident, only some points in it which come in contact with the interests of the body politic. Those points are celibacy, confession, and jurisdiction. In so far as these men, or as the authorities of the Church of Rome, favour celibacy and auricular confession, they are anti-social. The law cannot interfere to put down preaching and teaching directed against the institution of marriage; but it can assist by its force the authorities of the Church in rebuking such teaching by its ministers. The law can put down the practice of hearing confessions by the ministers of the Church; and it ought to do so, in the interest of the morals and of the liberty of the community. These Ritualists want to have the Church of England "liberated" in order to have free play for their symbolism, their authority to meddle in families, and their monkery; and to obtain this evil liberty, they are ready to combine with Nonconformists, who think their religion little better than harlotry, and with atheists, who prefer Buddhism to both of them. This alliance may not be more incongruous than the parallel one between such as regard a Church establishment as a real aid in the advancement of religion with such Churchmen as even Bolingbroke and Gibbon; but it is closer and more vigorous, for a common enmity is almost always a stronger bond of union between both parties and men than affection and support towards an institution. The expectation that priestly power would be largely increased were the Church of England made into an independent corporation, is not extravagant. Not ten years before the formal commencement of the Oxford movement, a very sagacious English clergyman and man of letters denounced as too ridiculous to be

conceived that any portion of English society could ever at any future time furnish converts in any number to Romanism; and if the very improbable issue did take place, all circumstances and apparent tendencies being against it,, a like issue when many circumstances and many tendencies would favour it, is not one the fulfilment of which should be thought a mere visionary and unpractical danger. It might not proceed far; the revival of auricular confession as a common practice amongst a people whose whole nature is opposed to anything so abject is very unlikely; and general clerical celibacy is by experience impossible except under compulsory law; and, besides, there are to operate against it various social influences. To live single is cheap, but to marry a woman with property is better economy. There are other exercises of priestly power far more likely to become prevalent in an independent Church; such as refusing to celebrate marriages between persons within the degrees of relationship which the Italian Church and the canon law make prohibitory, but which are not so under the law of England; and the refusal of the sacraments on capricious grounds—even refusing to baptize infants not born in matrimony, of which there are constant instances among the Dissenting Churches. In ways like this, and in other things equally small, that disposition to tyranny which belongs to all, but to none so much as to the average clerical mind, and which therefore requires for the interest and comfort of society constant suppression, could find exercise. It is for considerations of this kind, as well as for others, that a large portion, if not the majority, of the reflecting public look with apprehension on a change that will not, as they believe, lead to an extension of individual social and religious freedom.

There is one ground of complaint made by those of

the Nonconformists who look with jealousy on the Church as established, which more than all others enlists the jealousy against it that is part of the democratic feeling. They express it that it is an unjust thing that a large part of the national property should be devoted to the interests of a fraction, larger or smaller, of the community, and especially unjust to tax the whole community for the purpose of spreading a set of religious opinions entertained by only a part. The endowment from the public estate of an institution the function of which should be the spreading of a set of opinions, is what very little could be said in commendation of. But a Church, even one founded on the most exact definition of the dogmata which its founders wish to be taught, is by necessity of its nature, far more than a mere machinery for the propagation of those dogmata; it is a social organism. Those religious bodies which draw the closest curtains around themselves, and desire the membership only of those who profess conviction of the most narrowly defined doctrine, are those in which the social connection between the minister and the laity, and between the lay members and one another, is the strongest; and in them also the religious life enters the most markedly into the intellectual life. As organic bodies, they may be possessed of an inferior vitality to the great historical Church; which does not prevent their vitality from being stronger and more searching in degree. Endowments made to Churches are in no case in experience made to the religious doctrines of those Churches; they are made to the Churches themselves, or for their purposes. One which contains disciples of Laud, disciples of Simeon, and teachers who would not admit themselves to be disciples at all, but rather sympathizers with the schools of Stanley and Haweis, is not in any sense an organization

for merely propagating dogma. When the state, finding such a society, enters on close relations with it ; whether such relations commenced centuries ago, when both were in their infancy, or whether they are adopted in more modern times ; and when that union or alliance is formed naturally, and for the advancement of the commonwealth, it is natural, and is not a violation of the rights of those who disapprove of such connection, that the public purse should contribute to the objects for which the connection was formed. The expediency and the propriety of such contribution are part of the expediency and propriety of the Establishment itself. There were many persons in England, when the state first granted sums of money towards the advancement of general education, who made the objection that it was unjust to them to tax their substance for a purpose that they disapproved ; and others objected to the teaching of religion to children at the public cost. But the state resolved that general education was for the general good ; and these objections are not heard now, or if they are, they are spoken faintly and doubtfully. The public treasure was expended in imperial Rome on gladiatorial shows ; and the exchequer of France is drawn upon to support the theatre. Any objection which the Christians of the times of Nero and Vitellius had to expending money of the state on the public shows was really an objection to the shows themselves ; and objections which may be made by Parisian Puritans (there are such) to spending public money on the theatre are really objections to the theatre. In like manner, the argument, which may be called the financial argument, against the established Church, is not a separate one, but is only one form of the general argument. Moreover, it does not touch the point which may be raised as to the nature and origin of the Church property, which

is really not public property at all, or rather is not with any certainty the property of the state.

In all aspects of the subject of the relations between Church and state, political, financial, intellectual, and social, those relations ought to be determined ; maintained as they have been, or altered, according to the expediency of such relations, for the advancement of the commonwealth. It is evident that various persons, approaching the determination of the question which may be at issue within a very short time—the maintenance of the existing relations—and approaching it in the candid spirit of expediency, will arrive at opposite conclusions. For every matter which is matter of expediency is to be resolved by weighing against one another the benefits to be derived by opposite systems of action. And the effect of any administrative proceeding, as well as of any new law, is always very greatly influenced by the spirit in which the proceeding is carried out or the law enacted. There are dangers in action undertaken under the pressure of stimulated party passion ; and there are other dangers produced by the stagnant non-action of mere conservatism. Many contests in our political history of the last century or longer have issued in compromises, in which changes have been made, but not so great changes as the party of movement, which has been for the most part democratical, have advocated. It is not likely that the maintenance of the Established Church can be the subject of a compromise, or middle course ; the matter at issue is too capable of being narrowed for any such, beyond the financial dispositions which would have to be made if the Establishment was abolished. This, the narrowness of the issue presented, would give a force which it never possessed before to the democratic movement, if the English democracy became bent on that

abolition; because the most uninstructed mind could not fail to appreciate an issue practically so simple. The main grounds of hostility to an Established Church, if not simple, and if not logical, are susceptible of being put forward in very simple phrases, and in language which has all the appearance of close and evident reason. Those considerations, on the other hand, which lead the majority of the educated to look with favour on the Church of England as at present established, or nearly as at present established, are not simple considerations, and are not capable of being translated into ready popular maxims; they assume, too, either a conscious or implied knowledge of the truth of the first postulate of sociology, that the state is not so much mechanical as organic; while the mechanical theory of the nature of society is a ready one to the ignorant and half-educated; and under it, a close union between Church and state cannot avoid almost instant condemnation. The enmity of most of the modern European democracies to established Churches is not essential; it is accidental. It was not in the twelfth and thirteenth centuries only that democracy was Guelphic, or friendly to the Church. When the Cortes of Cadiz, in 1812, made a new constitution, they refused to allow freedom of religious worship to heretics; the Belgic Church at this time is the object of the veneration of one democracy, and of the hatred of another. If Ireland became an independent state, it would probably become also a republic after the shape of the miserable communities of Spanish America; and if the Irish democracy did not erect their Church into an establishment, they would virtually give to their clergy all the power in administration which they dearly covet. What occurred in France, at the great revolution and since, is consistent with the above; the democracy during the years that followed 1789 tore

down the most Ghibelline and freest of the Churches in fellowship with Rome, and afterwards re-established it, having cast out most of its Ghibellinism from it.

In the event of the dissolution of the union between the English Church and the English commonwealth, the expectation of men concerning the effect of the change will be various; and there is only one prediction which can be made with any amount of certainty. If it takes place, it will be permanent. The overthrow of the Church under the Parliament of 1640 was not properly disestablishment; it was meant to be reform; and therefore restoration was possible, and came in due course; which could not likewise come in the event contemplated. Other results can be forecasted, none with confidence; it is not at all impossible that, ten years after the abolition of the establishment, and reconstitution of the Church, those who have been most zealous in procuring the former may be hanging their hands in lassitude and disappointment; and it is not impossible that the clouds now dreaded by the fearful will burst in fruitful showers and open to sight a brilliant sunshine.

There are three capital experimental authorities in favour of a close union between Church and state; and there are two capital experimental authorities in favour of Church independence, and therefore, but negatively only, opposed to union. The first, and oldest, authority for a union is the Old Testament; the second is the New Testament; the third is the example of the Eastern Churches. The first example of the success of independent Churches is in the United States; the second is in Ireland.

Henry VIII. and Cranmer endeavoured to follow the model of the Israelitish state, in which the Church and the society in its political capacity were identical; going

to that length that Cranmer taught, that as Moses had instituted a priesthood, so it is competent to the King of England to appoint priests and bishops of his own authority. Burghley followed, and adopted the theory of the unity of Church and state, and perhaps it was only the difficulty of a female sovereign standing in the way that preserved him from ever asserting the extreme doctrine of Cranmer on the institution of the priesthood. That doctrine is far beyond Ghibellinism ; it is Erastian.

[Thomas Erastus, a German of the Lutheran Church in the sixteenth century, taught that the Church is an emanation from, or a creation or creature of, the state. It is plain that this differs fundamentally from the Ghibelline view, that both are bodies with a life of their own, and that the state is superior in jurisdiction. Unlike Erastianism, which is a dogma, Ghibellinism is a political school of thought, and admits of degrees ; it is also more favourable to clerical independence than the former, as well as than the Guelph theory. Erastianism may be regarded as the Ghibelline extreme, and ultramontane popery, as it was from Gregory VII. to Boniface VIII., as the Guelph extreme.]

The error of the English reformers, in adopting without discrimination the model which they attempted to follow, does not detract from the authority of the model. In the Israelitish commonwealth, the union of Church and state was the closest that is possible ; and not only so, but the functionaries of the state were superior to those of the Church. Moses, the deliverer, the leader, the lawgiver, the head of the state, is placed over Aaron the high priest ; superior in power, more exceeding in righteousness. It was Aaron, and not Moses, who set up the golden calf ; it was Moses who was the man of God. This Ghibellinism pervades the whole Hebrew polity and history ; that national expansion which called for a monarchy to supersede the anarchy and weakness

of the four centuries of the judges, was a Ghibelline revolution, opposed by the old pope Samuel. The revolt of Jeroboam against the son of Solomon was a Ghibelline revolt against the memory and traditions of a priest-led and woman-led sensualist, and against a prince brought up under the demoralizing influences of an Oriental seraglio. The weapon which Jeroboam inconsistently borrowed from the Guelphic armoury, in making priests of the lowest of the people, a weapon of an essentially revolutionary nature, intended to divide the new state from the old one for ever, was without doubt one of the causes which ultimately led to the denationalization and overthrow of the Israelitish kingdom. And in the politics of the later Hebrew time, especially under Hezekiah, are to be seen not indistinct traces of the identification of national greatness and prosperity with the predominance of the old principles.

This is the witness of the Old Testament ; and the New Testament is not silent. Many persons think that the religious favouritism which is apparently involved in the state being on relations of establishment and endowment with a particular Church, violates those rights which are embodied in the term "religious equality," and is accordingly a remnant of religious persecution. Now, the whole of the epistles written in the first century by the first generation of officers of the newly founded Christian Church to the congregations—epistles which the universal Church has always regarded as having great authority, which enter minutely on various matters connected with the daily life and duties of men, and also of their political life and duties—in no place contain any instructions respecting the possible future relations between Church and state ; and this, although Paul, the apostle of the nations, and the author of most of the letters, evidently anticipated

that the new religion would soon overspread the known world. On the other hand, the Founder of the new religion expressly forbade religious persecution, when He rebuked those of His followers who desired vengeance against some churlish and unbelieving villagers. He who did not decline the title of King of Israel, and who was by traditional pedigree the heir-apparent of that throne, said on one memorable occasion directly, and said the same many times inferentially, that His kingdom was not of the present order. Yet He appointed ministers to govern that kingdom, and conferred on them a certain power of jurisdiction; obedience to which jurisdiction is by the nature of the Christian society voluntary. In the latest written book of the Christian Scriptures there is a record of a vision in which the kingdoms of this world become the kingdoms of the Anointed of God, or the King of spiritual Israel; towards which consummation, which is or ought to be the prayer and constant and really only object of the Church, it is difficult to understand how it could contribute, that under the present order the kingdom of Christ should be utterly severed from the kingdoms of the earth; whereas, if the union is maintained and kept close, the realization of that, of which the Israelitish state was a prototype, is conceivably possible under the operation of agencies now in being.

There is reason to believe that the separation in the eighth century of the occidental Churches from those which regarded Constantinople as their metropolis was much more political and geographical than theological; it was the erection of the bishopric of Rome into a temporal state at or about that time, while none of the Eastern patriarchs ever became rulers after that manner, which coloured the subsequent course of affairs in Western Europe. In Greece, Turkey, Asia Minor, and in process

of time Russia, the Churches preserved, accordingly, those relations to the state into which all Churches naturally and unconsciously, and therefore unavoidably, fell, when the bulk of society became Christian under Constantine, the disturbing force of the papacy being inoperative. Those relations are strictly Ghibelline, and the example of the Eastern Churches is alone sufficient to establish that the Ghibelline condition is natural order, and that Gnelphism, therefore, is anarchic innovation.

The perfect independence, and the equality as complete as possible, which the Churches of America are possessed of in their relations towards the government, are the first example of the like in the history of the world. In France the equality exists, but the independence does not; and if the independence did, seeing that the majority of the French people belong to the same Church; which is officered by forty thousand zealous clergymen, it is certainly to be doubted if it would tend to religious freedom. The success of the experiment of religious equality in America, great as it is, is attributable to the circumstances of the system, not exclusively to the system itself. The overthrow of the infant religious establishments at the time of the war of independence was a political measure. The same may be said of the recent disestablishment of the Irish Church; but that was undertaken also on grounds other than political expediency; for there was a very general opinion in England respecting that Church, that its continued connection with the state was an injustice of a speculative, though not of a practical nature, to the bulk of the population of Ireland. The results of the abolition of the connection have been very small—small as affecting the Church itself, and small in general politics. Owing to the composition and the traditions of the Irish Protestants,

they used their ecclesiastical independence in an extremely conservative spirit; and they placed the laity, in their new constitution, in a position of commanding power. It was expected that what had been done would remove from Irish politics all perplexities arising from religion; but the changes which had been made, more than a full generation before the disestablishment, in the manner of collecting the revenues of the Church, had smoothed down all the points on which there had previously been constant grating and consequent ill will; and the social mischiefs arising from the prominent political action of the Romanist clergy, and the necessity of opposition to their unabated claims to control public education, remain. The general political results of the dissolution of the union of Church and state in Ireland have been hitherto very nearly nothing at all.

When that measure was carried into effect, it was necessary to furnish to the Church a power by which, through its representatives, it could incorporate itself for the purposes of holding property, and of general administration. In one of the tracts issued by the Liberation Society, or published by some one who has the same objects as that society, this power of incorporation has been represented as placing the Church in a favoured position, and one better than that of other religious societies which have never been formed into legal corporations; and the suggestion is made, that in the event of the English Church being separated from the state, no such inequality should be permitted. There is an error underlying this view of the position in which the Church in such event would be placed. All the other religious societies in England, although not incorporated, are organized in a more or less complete way. This organization has been a process

which has occupied time and care ; and if the Church was not given the power of reconstituting itself on its disestablishment, the only way of its acquiring which would be by means of incorporation, a great inequity would be done, and an inequality of position produced under the erroneous pretence of equality. There is at present a real inequality between the position of the Church of England and that of the Dissenting Churches. The Church is not a corporation ; it does not require to be so, for the state takes care of its property and of its government ; and the Dissenting societies are at a disadvantage in that they are not incorporated, and given the power of holding property without the intervention of trusteeships and the trouble and cost of cumbrous legal forms. It is evident that the due remedy for this is not by binding and fettering the action of the Church, but by conferring powers on the other bodies, which would be advantageous to them, and, indirectly, also, to the whole community.

At the Reformation the Ghibelline principle was victorious—completely in the north of Europe, to some degree in the south ; and the comparative history of the northern half and the southern half since then is little short of a demonstration of the soundness of the principle. Spain is, or was till within very few years, the most ultramontane country in Europe, and behind all the rest in civilization ; France and the German Catholic states the least, and they are far in advance of Spain and Italy. National greatness and prosperity, and even national unity, are largely dependent on civil and religious freedom, of which Ghibellinism is part. Since the reign of Henry VIII., England has more than once undergone political collapse ; and those various collapses have always been preceded by abandonment of Ghibelline or Protestant policy. When Cardinal Pole

was prime minister, he dragged his country into an alliance with ultramontane Spain; and he lost Calais. Strafford, Laud, and Charles tried to subject England to the mean tyranny of a priesthood, and they had to submit to the loss of her place in Europe. The next generation of Stuarts did the same over again. France has suffered likewise, and from like causes. The expulsion of half a million of the best men of that country, when the edict of toleration was revoked, was followed at no long distance by the dismal ruin in which the reign of the great monarch closed. The war in our own time against Germany was the work of a priest-ridden woman rather than of the depraved sensualist who lost his crown by it. As for Italy, it was not till the territorial possessions of the pope were reduced to the floors and courtyards of the Vatican palace that she became a nation in all plenitude. The civilization of Russia is low; but its constitution is thoroughly Ghibelline; and the vitality of that state is vigorous, and its strength tremendous. More than by all other examples, the strength of the Ghibelline principle is evident in the history of the Hebrew Church and nation, which have lasted during the eighteen hundred years since Titus laid Jerusalem waste.

Law,
natural and
artificial.

The division of labour, which is the basis of all commercial and industrial civilization, appears to have been applied to politics in the first case by the separation of the regal and sacerdotal powers. Other applications of the principle, when monarchy has been preserved, have been by way of delegation more than by way of separation. The highest function of the

ruler is the judicial ; so high and so distinctive it was in the earlier ages of society, that in the older Hebrew Scriptures to govern and to judge are used almost indifferently. The same idea still prevails in the countries of the Levant, and in India, where the greatest praise that the people can give to a governor is, that he dispenses justice without selling it. In those early times, the powers of the king, as judge, were necessarily larger than they became later ; because the judicial authority involved and necessarily included the legislative, the judge making law in accordance with instinctive notions of justice and according to surrounding custom, so long as no written code with authority of the state existed to guide him. This intermixture of the judicial and legislative powers never wholly ceases ; and the division of government into the three departments, executive, judicial, and legislative, is and can be never altogether definite. Although the power of the judge as defined may be only to administer the law, he can never be divested of the power of interpreting it ; and this implies a legislating power more or less limited ; also the judge, to make his rulings effective, cannot be without an executive authority, or, at least, a mandatory authority over the executive. The executive has by its constitution legislative power, in that it makes and must have the power of making rules for the governance of its servants and for the conducting of its business ; and, no matter how closely those rules, instead of being made entirely by itself, have been laid down for it, the administration of them involves and implies a certain amount of power, judicial and legislative also. Where the prerogative of making new laws is vested in a separate and defined legislature, whether it be the king in council, the general assembly of the community as in the Roman

tribes, or the representatives of the people as in Parliament, the body holding that prerogative is impelled by its position to interference with and ultimate superiority over the two other departments. Thus that division of labour which, having originally a moral ground, is yet in its application to industry more a mechanical than a moral principle, has never been complete when applied to the departments of the commonwealth. The highest degree of political civilization is reached, when the boundaries of those departments are, not the most exactly ascertained, but the most certainly ascertainable. The undue predominance of one over the rest is injurious to good order and to liberty, the product of order; how to settle the independence of each, as well as their interdependence and chronic harmony, and how to adjust collisions when they arise, are amongst the most important problems of practical sociology, containing that class of political questions which are called constitutional.

There are matters still superior in importance to constitutional questions, and primary in respect of time; for the determination of the functions of the various state departments in relation to one another arises late, not early, in the history of the society. It is now matter of general consent that the state should not make religion one of its departments; and it is matter of nearly general consent, in this country, that it should not make the regulation of the course of industry and trade its business, directly or indirectly; and in all countries where any tolerable degree of civilization is prevalent, that such regulation should be at least indirect, and interfere but little with private independence. It is generally, not universally, received, that a care over education is a proper exercise of the intervention of the state, and that this includes an attention to the

advancement of science and art ; it is also generally received that the care of the public health, and the removal of that which is detrimental to it, with the enforcement of contingent regulations, are matters proper to the government. The undertaking of material works of public advantage, the deepening of rivers, the care of the coasts, the maintaining of communications, the defence of the country by armies and fleets, are but the exercise of the custody of the state's own property, and are matters of controversy as to details of administration only. Beyond and above all these, it is the part of the state to protect its subjects or citizens in the sacred and inalienable (except by forfeiture by crime) rights to life, liberty, the enjoyment of their property, and the pursuit of happiness. Some of those who lean to the mechanical theory of society even hold that government was instituted for the protection of life and property ; and some, that all other objects are adventitious.

Since the middle of the eighteenth century, and especially since the publication of the noble words of the founders of the American state, a greater amount of investigation into the principles of human society, and of speculation concerning them, has taken place than in all the years before. The man who had thought most deeply on these matters, and understood all their aspects most thoroughly, of all his contemporaries, and perhaps of all men, taught that all natural rights are dropped or surrendered, and that the social rights of men replace them. However this may be true of some of those natural rights, in its broad and unlimited interpretation it is contradicted by other axioms which the same great philosopher employed ; and if one of the main objects of social order is to defend natural rights, which cannot be enjoyed in safety and fulness otherwise, it is a

contradiction in terms to say that those rights cease on the institution of the society the value of which resides in its power of protection and defence of them. If life, liberty, and the pursuit of happiness are rights of men in a state of nature, or ante-social state, and if the enjoyment of them were incompatible with the well-being of the society, and if the objects of the society were higher and greater than the protection of those rights, the maintenance of which would be inconsistent with those higher objects, then the position that they are extinguished on the institution of the social frame would be tenable. What rights are in reality surrendered by the natural man to society, are his rights when in that state to do for his own defence those acts which society undertakes for his own good and for the good of all to do for him; and in this, if in no other particular, is proved the moral superiority of the social state, which makes private vengeance, previously a necessity, into a crime. And this, too, in degrees; for the stronger the society is, and the more capable of enforcing justice, the greater is the criminality of self-vindication. Also, if all natural rights are voided as supposed, the right of property is derived from the state; and property is, therefore, the creation or creature of the state. Now, if property is posterior to the existence of the state, it (property) must have derived its beginning from the legal denunciation of theft; whereas "Thou shalt not steal" would convey no meaning to men to whom the idea of property was not familiar. The fallacy which lies under Burke's denial of natural right is, moreover, virtually exposed in his own words, where, replying to the shallow speculators of his time, he enumerates first on the list of "the real rights of man," "Men have a right to the fruits of their labour." It would be easier to show that society is the

creature of property, than that property is the creature of society.

Most of the disputes between men are about property; and in the earliest ages, when justice began to be administered, all decisions, there being no codes or precedents, were made according to those ideas of right which are natural and common, and in recognition of the customs which general tacit consent had established. Custom is the foundation of jurisprudence, and the foundation, too, of fundamental law. Codes of law, in which practice is systematized, are the product, not of the first, but of the second stage of civilization; and that which is but a form of custom, prescription, is a main and essential part of that which they were intended to sanction and enforce. All old law, in all communities, is of this nature; for there are two kinds of laws—fundamental, which are based on permanent principles, and regulating, or laws of the nature of bye-laws, to assist in the administration of affairs, or to provide for temporary and circumstantial convenience. The division of laws into these two classes is general, and not exact; for laws which originally were fundamental, may, from radical changes in customs and circumstances, become inapplicable, and so at length obsolete; and later laws of the regulating character often embody in themselves and apply fundamental maxims and principles. Most fundamental laws are in their nature, and often in their form, declaratory; or putting into the shape of permanent rules what had previously been matter of custom, or the result of recognized just and necessary judicial decisions; and most regulating laws may be described as enacting. But all declaratory laws are not merely so; they may be in their form, and partly also in their substance, enacting and new, when they provide means for their

own administration; and many merely enacting laws may be in their form, and partly also in their spirit, declaratory. These divisions belong not only to the early stages of legislation; they pervade its whole course and history; and an apprehension of them is necessary to a knowledge of the science of jurisprudence. The fundamental and declaratory laws are for the most part organic in their nature, and the regulating and enacting laws are for the most part artificial and mechanical. All this applies both to the laws which prescribe punishments for crime, and those which define the rights of men towards each other in matters of property. It is necessary to the efficacy of laws against crime that the punishments shall be in a proportion which the general conscience considers just to the offences; and accordingly good penal laws are ultimately of the nature of enforced custom. For if too severe or cruel punishments be denounced against small misdemeanours, punishments which the public opinion regards as excessive, the judicatures will not enforce them, whether the judicatures be juries, which represent directly the public opinion, or sole permanent judges, who are not capable of being uninfluenced by it; so that disproportioned penal laws do not carry out their object, and crime remains unreprieved. If a regulating law is not consonant with general custom, it cannot be enforced; or if enforced in part, it will be defeated by evasions. Laws can also modify customs, as bad shoes can distort feet, and produce corns; and also, when they are just, laws can develop custom, and ultimately give to the regulating and apparently artificial law the moral force of natural custom.

The oldest code of laws in the world is the commandments of Moses, and they contain, as enactments, nothing new; if there be any doubt respecting the

fourth commandment, that is silenced by the word "Remember," with which it is prefaced. The best systems of law in the world are, like that of Moses, declaratory and natural. Two hundred years ago there were in England not more than two leading enactments, which formed the basis of our commercial jurisprudence—the Statute of Frauds, and the Statute of Limitations. The former of these, amongst other provisions, made those trading bargains and contracts only, binding and enforceable, that were accompanied at the time of their making with certain forms, which were not, and hardly ever could be, matter of general custom. It may be said with correctness, that of the thousands of bargains for the sale and delivery of goods made every day, nine-tenths are made without reducing them to writing, without part payment, and without part delivery on the spot. This is a capital example of a regulating law ; and there never was a law more constantly and regularly evaded, the reasonable evasions—and they are nearly all reasonable—being supported by the judges. The old common and statute law of England being in great multitudes of cases quite inapplicable to the commercial questions, which in commercial progress became daily more numerous, the function fell in natural course on the courts of law to make law in the form of decisions and precedents for themselves. There were two great men, whose authority and whose decisions are and will be always held at the very highest value in English courts—Lord Chancellor Finch, the founder of modern chancery or administrative law, and Lord Mansfield, the father of modern commercial law. The system upon which that great judge, one of the most instructed men who ever lived in all ranges of human learning and knowledge, proceeded in his judgments, is laid down by himself. When a case for

decision came before him which was not referable to an existing statute providing for the like, nor to a former ruling of the courts applicable to it, he sought for grounds for his decision in those sentiments of natural right which are universal, and upon which property may be said to be founded; and in those foreign codes, chiefly the Roman or civil, and the Jewish, which furnish evidence of the proper application and interpretation of natural rights; and above all, as he repeatedly declared, he sought for grounds for his decisions in the trade customs and conventions common and recognized by the class to which the suitors before him belonged. Modern English commercial law is founded on, nay, is the creation of, these judgments; both that law which is the guide of the courts, and that which has been embodied in acts of Parliament. The superiority of results arrived at in this especially natural manner over the operation of merely artificial and regulating enactments is exemplified in a forcible manner in the case of the modern law of partnership in trade. About the middle of the present century, provision was made by Parliament for the facilitation, without a special power, as had before been required for each case, of partnerships in which the members might trade as corporations, the property of the corporations and not the private estates of the members to constitute their assets. The act or acts regulating the affairs and the government of such companies were contrived by a lawyer, who has since grown to be the greatest judge that our history has produced, except Mansfield and Eldon; their provisions are minute, even searching, and they appeared when new almost perfect products of legislative art. But having regard, as is the nature of artificial and regulating laws, to the future, and not, like declaratory laws, to the past, they

have required since their first enactment constant alteration, and have been a prolific source of contention and litigious disputes, both amongst the members of the companies, and between the companies and the persons with whom they traded. This has been a serious injury to the community, and it has also, to such extent as it has gone, been injurious to the character of the judicature; for, most of the legal questions arising out of those laws being questions arising from their provisions, the judges, instead of having in this class of cases to rule matters involving great principles of right, are generally reduced to the petty function of interpreting the meaning of clauses of acts of Parliament. The laws of England concerning patent rights, which are entirely defined by statute, and the regulations concerning which are most unreasonable, cumbrous, and costly, are another example of the unsatisfactory results of artificial legislation. Those relating to copyright are another, probably the strongest example of all; for they exhibit both a very imperfect system of legislation, and an actual perversity on the part of the legislators, who almost deliberately cast behind them the true principles of law which the courts had established, and created an inferior system by statute. An author's property in his book is a natural right, like the natural right of a man to the fruit of the tree he has planted, or the wood of the tree he has felled; a right acknowledged from the earliest days of printing till a time memorable for great events in the affairs of England and America. It happened in 1774 that a case involving questions of property in copyright came to be tried in the highest law court of England, and a decision was given which inferentially denied the natural right of the author to a property in his book. In order to afford that protection to writers of books to which justice and policy entitle

them, the legislature, which before had made only one law concerning copyright, being a penal law against infraction, began to treat it in the new law which it then made, not as natural property, but as artificial property, or monopoly, created by the state. The intention was good, but the procedure was wrong and productive of evil ; there should have been nothing but a declaratory law enacted, replacing the property, the security of which was speculatively endangered by the decision of the Lords, in the position it had occupied before. It is a very remarkable coincidence that this occurred at the time of the outbreak of the American revolution ; had our Parliament in this instance adhered to sound jurisprudential principles, the new government of America, which has always had a reverence for British law, and indeed which in many things constantly copies it, would in all probability have modelled their copyright laws on ours, and also made the recognition of copyright property mutual, to the common advantage of writers and also readers of books in both countries.

[It is an error to suppose that property in copyright is less a natural right than other property. The man who has a garden in England has a natural right to his apples, and the Spaniard has a natural right to the fruit of his orangery. The difference of time, in that the art of printing was not known till the fifteenth century, is no more than the difference of place. No kind of property ought to be more inviolate than a property in books ; the labour devoted to producing all other things is largely aided by the operations of nature ; but, excepting the few pence which the pens and paper cost, a man's book is entirely the result of the labour of his own brain.]

The course of British legislation on the subject of wills has been very different from the above. The disposition of property by the moribund became, from the earliest

times, by nearly all cases being similar, a matter of custom. The owner of property, when deceased, can have no power over it ; but retaining while he lives the power of gift, a gift on the death-bed could never be regarded as differing from one made in the prime of health ; and custom enforced a regard towards the testamentary disposition of property. Law placed custom under formal rule ; and the history of English law on the subject is an almost perfect example of what regulating enactments can attain to, when they are based on fundamental principles of right, and on the recognition of the facts of human nature. Providing what manner a man's goods are to be disposed of, when he has made no disposition, from the example of what most just men do with theirs when they do dispose them, our law (declaratory in one case, regulating in the other) enforces the will of one who makes a will ; and fences round with wise care all the forms which are to be observed in the making and publishing of wills, so that authenticity and valid testamentary capacity shall be under the smallest possible amount of doubt. The final leading enactment on the subject, the statute of William IV., removes nearly all imperfections ; one only, and that not of magnitude, remains. It would be an improvement if, in case of the terms of a provision in a will being doubtful of meaning, it were permissible to permit evidence to establish the testator's intention derived from other than the will and its words ; viz. circumstances, and acts of the testator. The major part of what is known as the constitutional law of England is what may be described rightly as fundamental ; and our principal constitutional enactments are in their essence and in their form declaratory. Magna Charta, and the subsequent various confirmations of it, are declaratory both in substance and form ; the Petition of Right is a declaratory act ; the Declaration

of Right, on which the Bill of Rights is founded, is the same. The act of Habeas Corpus, an enacting law in appearance, is really declaratory; that act does not create the writ of *Habeas Corpus*, but defines it, and prescribes the cases and the circumstances under which it shall issue. Our older judges held that the Statute of Treasons of Edward III. is simply declaratory of the common law. The law of libel of 1792, a law which contains by inference the whole constitutional doctrine concerning the functions of juries, is strictly declaratory.

There is a class of laws which has grown to much importance, especially during the last generation, or somewhat longer back—a class which is supposed to resemble the sumptuary laws of the Middle Ages, and those other laws which fixed prices of labour and of goods, the extent of farms, the manner of cultivation, the number of apprentices in trades, and so forth. That class is that of which the best example is the Factory Act; but the resemblance between most of the recent regulating laws concerning industry and industrial relations, and the mediæval legislation, is not real. Those laws which made it penal in the chapman to wear the same kind of dress as the noble; tried to restrain, not to develop, nature and custom; the laws fixing the rate of day-labourers' wages were passed to keep them down, and to prevent them from settling themselves. The Factory Acts found a general disposition towards the shortening of the hours of labour; a disposition not confined to factory owners and workmen, but prevalent also amongst the keepers of retail shops; and those acts gave to the custom the sanction and force of law, in a limited number of cases, in which it seemed expedient so to do. They are founded in their conception on the true declaratory principle; and so long as that species of legislation continues to be so founded, and does not

wander into dictation, interference, and innovation, as occasionally its advocates have endeavoured to direct it, it will be for the advancement, within its scope, of the commonwealth. It is worthy of observation that there are in France and in Prussia factory laws like the English; but, the habits of the people of those countries not calling for so much restriction, the continental laws do not limit the hours of work to so short a period as ours. In Belgium there is no law on the subject.

The application of the principle of custom, or of formed public opinion, in criminal jurisprudence, does not present many practical difficulties; the propriety of proportioning punishments to offences is more obvious than the general propriety of basing regulating law on custom and instinctive and properly developed ideas of right. Injudicious penalties, which indirectly tend to defeat their object, are generally more readily perceived to be wrong than injudicious regulating laws; for custom is capable of being modified by law, while a sense of natural right is of the nature of conscience, and spiritual; and that which is essential and permanent is in the issue stronger than that which, though based in nature, is changeable in its accidents. The laws against the stealing of game had, if not their origin, their example, in the forest laws of the Conquest; they have always been extraordinarily severe, and have been chronically unsuccessful in extinguishing the class of offences against which they are directed. This is the only class of penal laws which, during the present century, has not been relaxed enough; some have been relaxed a great deal too much, if we have regard not to the laws themselves only, but also to the enforcement of them. Rape, a crime in all respects as foul as murder, ought reasonably to be punished with the same severity; for, like murder, the wrong done by it is

irreparable. Public opinion, as well as the example of ancient codes, would not be opposed to this. The crime of robbery with violence was for years dealt with too leniently; and a change, called for loudly by the general voice, had to be made. Perjury was in old times punished with cruelty; at present it is often even overlooked, and never punished enough; and the recent testimony of many judges, and of most lawyers, is that this crime is on the increase. Brutal assaults, including those on women, were never dealt with as the vile nature of such wickednesses calls for; there can be no doubt, both that public opinion would approve heavy punishments for these, and also that such punishments would greatly reduce that sort of crime. There is a whole class of frauds, which come under the French name of *escroquerie* (roguery), that is absolutely encouraged by the impunity which our laws afford them; and generally, in this branch of jurisprudence, the civil or Roman law appears superior to the English. In no country is one crime—and that the most hideous and diabolical of all crimes—the procuring the female victims of lust, treated with the severity rightly due to it. The author of this treatise must confess that he cannot account for the apathy which is apparent on the part of the public, and on the part of individual statesmen, towards this crying abomination. And he is also unable to understand why that description of adultery which consists in the seduction of a married woman should not be punishable as a crime; although, were it made so, care should be taken in the first instance not to impose a penalty so great as to go beyond the general judgment of the criminality of the offence, and so produce an unhealthy pity for the guilty man—a pity that might be absurd, but would certainly be demoralizing. One main consideration ought to govern the

provisions of all criminal codes—the distinction, well known to jurists, between *mala prohibita* and *mala in se*. The former ought generally to be punishable only by fine; the latter almost invariably by personal infliction. The mixed case of public drunkenness, which lies properly between crime and vice, although a *malum in se*, could probably, in the present state of opinion, not be punished except by fine; and it is doubtful whether it ought to be otherwise in any state of opinion. There is only one class of offences in the punishment of which new and recent legislation in England appears to have gone altogether too far; that is, corruption of different kinds in elections of public functionaries. Corruption is subtle and varied; the most subtle forms of it are probably the most mischievous, and also the most difficult to reach; so that penal legislation directed against it is in practice applied only to the coarser forms. A law which should forfeit the franchises of such as had proved themselves, by trafficking in their exercise, unfit to enjoy them, would be reasonable, and would be approved by the common sense and common conscience; but a law, directed against those who influence illegitimately the holders of franchises, visiting them with punishments far heavier in proportion to their moral criminality than those under which the beaters of wives and the kidnappers of young girls are dealt with, will be found all but inoperative from its discordance with natural feeling.

In speaking of a subject in no way connected with or similar to this, the subject of constitutional or parliamentary reform, Edmund Burke, writing about the year 1780, states that he was unable to find any general, much less any universal, conviction of the desirability of changes; and adds that, if the general and confirmed opinion were otherwise, Reform would be found

irresistible, and ought not to be resisted. Although the subject on which these words were spoken has no connection with the subject of criminal or of civil jurisprudence, the same principle or fundamental rule, viz. that regard should be had to public opinion and common sense of what is right and expedient in the things of legislation and government, is common to both. This is not at all the same as saying that the function of the legislature is to carry out the popular will ; that is a view of its constitution and intention eminently in accordance with the mere mechanical theory of society. For legislation to be successful in its objects, it should be at least not counter to the public recognition of the propriety of its measures ; and that the public, matured, and reasoned opinion concerning a measure of government or law should be a main factor in determining the government or legislature upon the measure ; this is in accordance with the fundamental fact in the science of sociology, that society is an organism whereof the parts, when in a healthy state, are in harmony with the whole and with one another. There is probably no branch of that applied science in which this truth can be more evidently and easily established than in respect of the details of criminal jurisprudence ; in the proper proportioning of penalties not only to the moral criminality of acts, but also to the general sense of their criminality ; and, in a lesser degree, to the mischievousness of the acts in addition to their essential moral criminality.

Judica-
tures and
their
proper in-
dependence.

The earliest kings were also the earliest judges ; and the judicial power, where monarchy subsists, is still in theory, and often in practice, a personal attribute, though

generally delegated. It is a matter of more than mere antiquarian interest how these delegations from time to time were made; what functions were given to the judges (or deputies); what appeal was reserved; and, above all, what were the terms of the appointments; for questions arising from all these points have been continually coming forward in all ancient and modern times. The kings of Persia no doubt gave to their satraps of provinces a higher amount of authority than to the inferior magistrates under them; and in most civilized countries there has been a gradation of courts of justice, the powers of the lower courts being over ordinary cases, and appeals lying in the last resort to the crown. It is very likely that in very early times it was thought necessary to the due administration of justice, that those who administered it should be responsible to the fountain of justice; and that which we are so familiar with, the practical independence and non-responsibility of judges, would have been in the early monarchies, and even in the early ages of European civilization, unintelligible. There is reason in this; for while the contest between Church and crown was proceeding, and the main dispute between them was about jurisdictions and systems of law, the real independence of the king's courts may have been best secured by the dependence of the judges who presided in them on the king. When Frederick I. reduced for a short time Lombardy under the imperial authority, and procured at Roucaglia the adoption of Justinian's laws as the code of the empire, the principal, and in some cases the only change he made in the constitution of the cities, was to assume to himself the appointment of the Podesta. In all European states which have preserved monarchy, the appointment of the principal judges has been in the hands of the monarch, the head

of the executive. In those which have adopted republican forms, the executive has generally appointed; the difference being that monarchy ceasing to exist, as in France, the powers of the king reverted, nearly as matter of course, to the new executive authority. In several communities in ancient times, in Greece and in Italy, where monarchy was cast off at a very early period, the communities assumed to themselves, in general assembly or by delegation to chosen assemblies, the administration of justice; the most remarkable of which constitutions is that of Rome.

[Grecian models have far less in common with modern European conditions of the state, in every department, than the Roman model. The latter has had a direct and historical influence on the west of Europe, and in its foundations has far more in common with European and Christian civilization than Grecian institutions could have, inasmuch as domestic relations occupied a large share of Roman life, private and public; while in Greece their operation was small. The Hebrew state for this cause comes nearer to European states than any of the Grecian.]

For centuries the higher judicial power in Rome was a function of the senatorial order; it is not known how the assemblies, which certainly bore some similarity to English juries, were chosen; their composition only is known. The greatest revolution in the Roman state—that which made the subsequent revolutions under Marius, Julius Cæsar, and Octavius Cæsar possible—was the transfer of the judicial power from the senatorials to the equestrians; for, not only in monarchies, but in republics also, the possession of that power constitutes sovereignty. Like as in those ancient states, where the judicatures on the overthrow of monarchy were made popular, the Saxons of England administered justice popularly. That nation in reality was never monarchical, in the ordinary way, at all; down to, and inclusive of,

William the Norman, their kings were always elected, in form at least ; and there was no incongruity in their judges being nominees of the public and not of the king. Some of the most modern republics have made the judicial office elective ; this is the case in more than one of the states of the American union, where the judges are popularly chosen each year. The general course of things, till very recently, has been towards the acquiring by judges of the highest degree of independence. In England, the limitation of judicial offices to a class educated to the purpose, while the power of removal remained in the executive, was an advance towards independence ; the virtual incorporation of the society of lawyers, and the growth of maxims and traditions of that society, formed during the whole of the mediæval, Tudor, and Stuart periods, a barrier more or less strong against executive interference and consequent tyranny ; the independence becoming all but complete when, at the near end of the seventeenth century, the appointments of judges were made for the king's life, their emoluments fixed, and the judges were made irremovable, except for proved delinquency and on the joint action of the legislature or supreme court of the nation and the executive. This independence is double ; by irremovability, the judges are no longer dependent on the crown ; and by payment fixed in amount, and from funds not from time to time provided, but permanently set apart for the purpose, they are relieved from the degradation of support by fees, and the danger of indirect or covert bribes. Accordingly, since the Revolution, there has been only one instance in England of judicial corruption. The action of George III. at his accession further advanced this independence, when he renewed the patents of the existing judges, and procured the passage of a law by which

such patents should in future be for the judges' lives and not for the crown's. All that is now required to make that independence as complete as independence can possibly be, is to prevent the shifting and advancement of judges once placed on the bench, and to make the Chancellorship a permanent and not changeable office. Were this done, and the number of judges increased, all objection to their being eligible to serve in the House of Commons would disappear; and the composition of that House, in which the legal society is now represented perforce by members who regard the House as they are individually concerned as an avenue to advancement, would be benefited; and, in addition, its efficiency in the mechanical part of legislation, in which it is exceedingly deficient, would be increased. The tendency towards judicial independence, which has been a very marked feature in the history of England during many centuries, has not been a distinguishing feature; it is one of the features and evidences of advancing civilization. In France it took a curious form. The kings of France, when wanting money, had occasional recourse to the abominable custom of selling public offices; among the rest, the magistracies of the provincial supreme courts or Parlements; having sold them, they lost the moral and also the practical power of displacing the judges; and the nominations, still in theory residing in the crown, became at length by establishment saleable. The result was the growth, chiefly during the sixteenth and seventeenth centuries, of an exceptionally strong and independent judicature, which indirectly acquired an authority in legislation; for the Parlements exercised their discretion in registering, or refusing to register, royal edicts, registration being essential to give these the force of law. Their action in this manner led in 1648 to a desperate civil war; and

so near at that time was the Parlement of Paris to attaining supreme power in the state, that without question this was the crisis which determined the after course of French political history. The war branched out into other objects of contention, and the great reforms which the Parlement designed were dropped, to reappear in after times. Had the Parlement of Paris been successful, the history of all such constitutions gives warrant to believe that their success in the one matter of registering edicts would have led to an extension of their power; and those bodies might have supplied the deficiency which France suffered under for two centuries, of being without a supreme authority. The monarchy was, in general opinion, nearly as absolute as absolute could be; but this was an error. Lewis XIV. and Lewis XV., at the height of their power, never exercised or assumed the right of imposing a land tax. The publication, in the reign of Lewis XVI., of the confused and alarming state of the finances, and of the amount of debts contracted for the American war, produced proposals for a general taxation of property; to which the objection was fatal, that the power of decreeing such was in the states-general alone. Supreme power must reside somewhere. The long disuse of the states-general was one reason amongst others for the violence and destructiveness of the revolution which followed their meeting in 1789. The sudden restoration of that part of the old French constitution, when it had no traditions to guide it, occasioned an assertion on its part of functions which may in theory belong to the supreme authority in the state, but which it is dangerous to the existence of settled government to summon into practical operation unchecked. The states began to destroy, and pretended to remodel, almost everything; amongst others, the whole system of the administration of justice, in-

cluding the Parlements, which they abolished. There was one thing which they could not change, however—the independent traditions of the legal profession and their respect for right and justice. Those honourable traditions, formed under the influence of the ancient courts, survived the great revolution, and those often-repeated revolutions which succeeded; and the French society of this time possesses a body of lawyers and judges superior to those of all other nations except England. The evil example of the states-general has been followed in our time; that evil consisted in their virtually destroying the mutual interdependence which ought to subsist between the legislature and the judicature. Supremacy must belong to the legislature, seeing that it has a regulating power over all other departments; but for supremacy to exist no more implies that it ought to be exercised to the destruction of the independence of other members of the body politic, than the existence of a court of appeal implies that it ought to treat the judgments of the courts below it with no consideration. In their session of the present year, the French legislature has given to the executive minister of public justice a new and enormous power, which is more calculated to lower permanently the judicial character than all the revolutionary action of the states of 1789; the minister has been authorized arbitrarily, that is without inquiry, without appeal, and without assigned reason, to dismiss and replace the great body of the magistracy of France. The legislators of 1789 overthrew the courts of law, and with their existence the independence of any new courts which they might establish till time and reputation should give them that prescription which by its nature is more easily destroyed than created; the legislators of 1883 strike at the source and root of the personal inde-

pendence and character of the judiciary. It does not make this stride towards anarchic tyranny the less mischievous, that it is done in a republic and under a democracy; it makes it worse. When James II. promoted Jeffries to the Chancellorship, and made judges of other lawyers of low repute, in the intention that their administration would favour the crown against the subject, he was able to give the power, but not the sanction, which their decisions might carry. All opinion revolted; not only against the tyrannical use of the power of the crown (or executive) over the judiciary, but because the judiciary was to be used against the interests of the community. But in a republican and democratical state, the legislature and executive of which are, nominally at least, and in all probability actually, representative of a majority, or certainly a strong minority of the whole people, a usurpation by those two departments of the state over the independence of the third, does not appear in the flagrant light that a usurpation of unwonted authority does in a monarchy; it appears to be done for the public good, and not for the furtherance of partial objects. James was a king, and his government might be supposed to be carried on upon some permanent principle; the new judges who replaced the old ones might be expected to carry out some policy at least comprehensible and persistent; and they were not in immediate fear of being dethroned to make room for others. The present government of France can look forward to no such permanence; a few months may be all its certain tenure of authority; and what has been done in this year, in the absence of protest, is more likely to be drawn into a precedent than dreaded as a warning. It is the setting up of authority over justice; it is the most portentous act of any government that has occurred for

a long time in the history of any country ; and it is the more so, owing its greatest dangerousness to the nature of the government under which it has been done, that it has been done avowedly to advance the cause of mere democracy—a democracy which is organized on as exclusive mechanical principles and with as exclusive a recognition of mechanical theories as it has as yet been possible for a system of government to be.

The founders of the great republic on the western side of the Atlantic, great now, and as great in everything that constitutes greatness except geographical magnitude from its beginning, acted differently towards their judicature. They preserved all through their contest with England, and have transmitted to their successors, a deep respect for that which they have acquired from England ; rebelling against their metropolis in defence of her own political principles, not inventing new ones to justify their rebellion. When it became necessary to construct a constitution for the thirteen units which had drifted into independence, a problem of no common difficulty arose ; and it was solved with no common wisdom. Whether the founders of the republic of the United States thought that an elected representative only would be insufficient to cement and make strong the alliance of the thirteen republics which has since grown out of an alliance into a real union, or whether they were aware of the truth, often and always to injury forgotten or unknown, that the judicial power is the sacred, central, and vital point of the political organism, does not appear, and perhaps does not practically signify ; for wise and cautious men, if in the dark, will feel their way to safety and smooth paths when they cannot see it. Those statesmen provided that the terms of the alliance between the thirteen republics which were entered on should not be

alterable by a mere majority of votes ; and they instituted a supreme court of judicature, not only to be a high court of appeal in all cases between man and man in their republics, but a court over the combining republics themselves ; actually with power to set aside any act of any of those states which should appear to the supreme court unconstitutional. There can be no stronger contrast between two things, than the position of the judicature in the French, and the position of the judicature in the American, state—if contrast can be between two things so fundamentally different as those two are.

There were some countries in the Middle Ages, which had been overrun and conquered by settlers from the north, who set up in their new habitations communities differing in habits and in social ideas from the peoples whom they conquered. The conquests were for the most part made over societies which were hereditarily in possession of a more complete organization than the invaders ; for, from the nature of their changing position, nomad races cannot attain to a state of more than elementary organization, or with any degree of compositeness. So long as the two races or nations remained distinct, the institutions of the two did so, modified only by the circumstances of the conquest or colonization ; and it was rare that, in its first years, the invaders carried subjugation of the natives so far as to impose on them not only tribute, but obedience to their imported laws and customs. Two nations, living in the same district, one the most numerous and with the older and more settled civilization, the other with most of the physical and all of the military power, were not likely to remain separate ; intermarriages, if nothing else, would mix and amalgamate them ; and with an amalgamation of the peoples came either a supersession of the modes of life

of one over the other, or the amalgamation of those modes of life, and eventually, of their political conditions and of their laws. Perhaps no such mere supersession as would signify on the one hand a complete conquest, or on the other a complete absorption, ever took place ; for all systems of law which prevailed in the European continent down to the issue of Napoleon's civil code, were mixtures of the Roman law with the customs, local and feudal, of the northern nations. The latest conquest of the kind spoken of which occurred in Europe, was that of England by William the Norman, followed by an immense immigration of persons of French blood as long after as during the reign of Henry II. The peculiar difference between this conquest and that of the south of Europe by Goths and Franks, is that the Goths and Franks imposed their rule over communities which had been deeply impressed by Roman institutions and law ; the process of the conquest of the Saxons, but partially influenced by those Roman institutions, by Normans, who had in great part modified their own according to them, was in that aspect converse. The result was the growth in England, as in process of years the mixture of races proceeded, of a compound legal system, differing from all others in Europe in its time, and differing from all others in all times. Similar cases, not of conquest and colonization, but of conquest alone, have occurred since ; in particular, the establishment of the empire of England in India ; and cases of colonization without conquest have occurred, such as the establishment of European factories and societies in the cities of the Levant. In such cases as these, the European settlers, military or colonial, have always insisted on being subject, not to the law of the land where they go to reside, but to their own. And rightly so ; for to subject a man by mere change of place to a social state

inferior to his natural one, is a degradation; and it would end, were the persons so subjected ever so numerous, by their being virtually swallowed up in the less civilized community. The law of natural selection is a strong law; but there is nothing so strong as to be incapable of being set aside. We are very much in the dark as to the true history of the amalgamation of opposing systems of law in Europe; and we know absolutely less of the history of the origin of the common law of England than we do of that of the common law of Europe. The adoption by the Diet of Roncaglia of the Pandects of Justinian is a landmark not to be mistaken; but we can only refer generally to the reign of Edward I. as the time of the earliest solid existence of practical English jurisprudence. It is a reasonable conjecture, that on the Continent as well as in this country, the fusions of law, which were tolerably complete at the commencement of the fourteenth century, were made much easier than they would have been otherwise, by the contest of both local and civil law against the canon. It is possible, that if we were in possession of the early history of the formation of our legal system, some light of a guiding kind might appear in reference to the establishment in India of a more uniform administration of law than has yet been practicable. Some alterations therein are at present designed, which would have the effect of enlarging the jurisdiction of some courts and extending the power of some judges; and curious misapprehensions have prevailed, both in India and in England, respecting the proposed changes: they have been recommended and opposed, not on their proper ground as to their expediency towards the due administration of justice, but as to their probable secondary and indirect influence on the social position of European settlers. It is not at

all unlikely, that in the progress of the fusion of Norman and English law, side issues affecting similar matters arose, or were raised, at sundry stages; but whether in early England or in later India, the effect of disputes of the kind occurring cannot be other than injurious to the course of the improvement of the law, from all connected with which everything ought to be carefully kept which would excite in any way sectional or party feeling or passion. The case is exceptional and rare, if it exists at all, in which it is proper to admit, in the settling of questions of jurisprudence, any but jurisprudential considerations. Some of the more recent legislation on the subject of juries, in both their powers and composition, is proof of this. It is within the eighteenth century that the proper function of a jury came to be fully understood and acknowledged. It is almost certain, that the theory of its function at first—not at first among the ancient Saxons, when the coroner or alderman was merely the summoner, and not the president of the court, and when the jury was also judge—but at its first use in mixed English justice, was to assist the court in making a just ruling; and the demeanour of judges towards juries, down to the revolution period, proves that the tradition of inferiority to the judge was pertinacious. The opposite, or Saxon doctrine, was forcibly expressed in a memorable trial under the Commonwealth, that of Lilburn, who ably and with success wrangled with the judges, and wrung a verdict of acquittal from men who trembled at the sound of Cromwell's name. "You are the judges of the law as well as of the fact;" and again, "You are the court," "And you" (to the bench) "are but Norman intruders." In this Lilburn was not incorrect, either historically or legally. If the finding of the jury is the finding of the court, and if the jury, having of necessity

the power of giving a general verdict, choose to find one contrary to the judge's direction, this constitutes an absolute authority, limited, of course, by their discretion and wisdom, but theoretically not limited at all. When it is said that the jury is judge in matters of fact, and the judge in matters of law, this definition of functions is not complete, if it overlooks the nature of the judge's authority in matters of law, which is expository and not mandatory. The full recognition of this was delayed till 1792, when a declaratory act of Parliament was passed, conferring on juries what had been for more than a century claimed, the function of finding "guilty or not guilty" on all the counts and issues in a case of criminal libel. About sixty years before the passing of that act, it was contended by the law officers of the crown that the business of the jury in such a case was to find only on the issues, Was the prisoner guilty of publishing the matter alleged to be criminal? and, Was the intention of the matter or its meaning that which was stated in the indictment? Most judges in the period which followed, including the greatest of them all, Mansfield, laid down that the business of the jury was so confined; nearly all constitutional statesmen held the contrary.

[A legal life of Lord Mansfield, properly executed, would be a valuable addition to our literature. His leaning towards authority was evident, and probably it was frequently mischievous; but perhaps that leaning was the product of that mental power and originality which made him the greatest practical legislator who ever presided in a court of justice.]

Supposing that, in a case of libel, it were left to the judge to decide on the criminality or non-criminality of the written matter, that being the issue on which guilt depends, an analogous application of a like rule in a

trial for murder would transfer the judicial power from the jury to the judge; for the question the former would have to decide would be, Did or did not the accused kill the deceased? and the question for the latter, Did he kill him with or without malice aforethought? In the matter debated there lay inferentially the whole subject of the functions of juries in all cases. The judges adhered to the new doctrine—for it was such—with great obstinacy; it was urged in vain that it was not to be found in the report of the most important libel trial that ever took place, that of the bishops in James II., and had its origin in the ingenious brain of Sir Philip Yorke, afterwards Lord Chancellor Hardwicke. Since the final settlement of the position of juries, which is to be dated from the declaratory act of 1792, it is to be observed that our judicature has reached a higher degree of public consideration and reverence than it ever possessed before. Apparently the presiding judge has been deprived of power, but he has gained in weight; as, somewhat similarly, the more completely law-governed and the less despotic a monarchy is, the more the monarch is raised above the danger and the soiling of personal political disputes and the responsibility arising from them. The judge's charge, in which it is his duty to expound the law applicable to the case both in its principles and in its provisions, and to digest and place in its proper bearings the evidence, has not diminished in importance because the power of direction is no longer assumed. In comparing the style and matter of judges' charges, such as were common in the last century, with such as are daily delivered now, the improvement is immense, and out of all proportion with the advancement which during these times has been proceeding in general education and intelligence. It is not unreasonable to ascribe some of this improve-

ment to the high position in which juries are placed by the law of 1792, and the general adoption in other than mere libel cases of the spirit of that law.

[The worst charge upon record is that in the trial of Cowper for murder, at Hertford, in the reign of William III. Cowper was accused of the murder of Stout; the corpse was found in a river, and evidence was given pointing to motive on the part of the accused. It was advanced that after the murder the body was thrown into the river; and a rope had been found in Cowper's room, with which it was surmised he had choked his victim. The judge who tried the case repeated the substance of the evidence, without any attempt to show how the various facts proved bore upon one another. A rope, he said, was found in the possession of the accused; on the other hand, no marks of strangulation appeared on the neck of the corpse. He did not explain that, if fifty ropes had been discovered, they would prove nothing unless a rope had been used. That is as bad as the colonial judge who told a jury that the plaintiff had three witnesses and the defendant only two, and therefore the former appeared to have the best case. In our own time a noted example of a bad charge is that in what was called the Penge murder case, in 1879, when four persons, one of whom was absolutely unconnected with the crime, were unrighteously condemned to death.]

During the present century, systems of jury trial, modelled after the English, have been introduced into many countries; the imitations of our forms have been close, but one thing is impossible to imitate: no French or Italian jury can be instructed into paying the due and intelligent reverence to a judge's charge which is always rendered in England. There is the difference between an institution which is constructed, and one which has constructed itself.

The greater the importance of the functions which are imposed on juries, the more necessary it is that their composition shall be the best possible. Legislation,

adopting custom generally, and deviating from it in details only, and not from its spirit, has prescribed the mode of selection : a panel summoned by the sheriff, with drawings by lot and challenges, absolute and for reason; and in important cases, a power to the suitor to obtain, with the court's approval, a panel drawn from that class of citizens who are supposed, from the ownership of a certain amount of property, to be superior to the ordinary. It would be difficult to find a more complete instance of the practical application in the affairs of the commonwealth of the law of natural selection than that which is presented by the formation of a special jury of the city of London. The sheriffs are elected by a popular constituency, and are invariably by practice of more than average position and character; they select, not choose at random, the panel from the more substantial citizens, being bound to pass over any in any point unfit, and to summon none but good and true men; while the challenges ensure as impartial and indifferent a body of twelve as is conceivable to be brought together by any yet known process. It is to be observed that the vital point of this organization is the power of selection by the sheriff; this selection, not choosing by lot or rotation, is the old Saxon system; for if the jury, or the panel from which the jury is framed, be chosen by any other way than selection, then, in those important cases in which a good jury is a necessity, the probabilities of forming one are greatly reduced. In ordinary times and for ordinary cases, much mischief might not be done by trusting a good deal to chance; but in those times when there is public uneasiness and agitation, it is not safe to trust to it; and seeing that at all times there is more or less danger of mischief, there is no excuse for foregoing a sound rule in order to obtain what is a very uncertain and always a speculative

advantage. The ill policy of deviating from the old Saxon rule of selection by the sheriff has been of late amply proved by occurrences in Ireland, where, by laws passed about ten years before the recent disastrous agitations, the power of selection was taken from the sheriff, and a whimsical kind of rotation, which overlooks or ignores fitness, and proceeds according to the initial letters of the names of the persons qualified to serve as jurors, was tried in its place. When the period of public disaster and doubt followed, it was found necessary to suspend the new machinery; and the temporary alarm was so great, that a power never before known was given to the executive to dispense with jury trial altogether. The lesson from these mechanical experiments ought to be obvious.

The fusion of two or more legal systems into one, when those two or more are the institutions of two communities, one of which has conquered the other or occupied its territory, is a natural matter of course, and a political necessity consciously or unconsciously to the members of the communities, when a fusion of the races is complete and thorough; and the legal fusion no doubt in some countries in Europe preceded the national fusion, the latter being a process that went on silently, and sometimes was never altogether concluded. When conquest was thorough, as in most of the feudalized parts of Europe, the local customs were often rather overridden than united with the feudal legal systems. Where this occurred, as in the greater part of Germany there is reason to believe it did, the introduction of the civil law by the emperors was the reverse of hostile to liberty; while in Italy, favourable as the civil law was to religious liberty, it was not equally so to municipal liberty; religious liberty being favoured by it indirectly, in that it advanced imperial at the expense

of papal prerogative. In England there was a genuine amalgamation of the local and feudal systems, going on in its development long after the amalgamation was externally complete, towards the preponderance of the local or Saxon principles; and this preponderance is apparently on the eve of very much further development, chiefly in the direction of amendment of the law and practices affecting land and real property. All discrepancies between the two in the branch of criminal law, excepting those parts of it relating to the stealing of wild animals, have now vanished; and most of what remains of the Norman system in English civil law, excepting what applies to lands, is not properly Norman, but imperial civil law; which system never came into England in any real force, or in the direct way of enactment that it came into the empire. We may attribute the extension of our liberties to this; for, though the civil law is more favourable to liberty than the feudal customs are, it is less so than the common law of England. One thing is to be remarked with respect to all the fusions of legal systems referred to, and the same refers to all of which we have any history—that all such occurred in the early stages of the history of each, with the one exception of the introduction of the civil law into Europe; and it was grafted upon new systems, not far past their infancy. Another thing is also to be remarked, that the progress of each system of law has been to become predominant. The civil law has superseded almost all other in the parts of Europe which belonged to the Roman empire; for the civil code of France, which in its original or imitated forms is now general, is but an adaptation of the Roman; and the Saxon law has superseded, and is superseding, the Norman in England, and in the United States and the British Colonies has practically still further superseded

it. The introduction of the civil law into England, in any form, was not by enactment ; and its chief hold on our jurisprudence is derived from the action of that part of our jurisprudential system which is not Saxon—that is, the equity courts. Now, it is evident that a fusion of two conflicting or parallel systems of law, when those two systems do not represent the ideas and traditions of two distinguishable communities living side by side, but when one of them has been invented as the most ready method of supplementing the deficiencies of the other, so as to avoid the confusion that the introduction of utterly novel things into it would produce, is a totally different thing from any fusion of the kind that occurred in the early times of European jurisprudence and legislation. In those early times, the fusion was a necessary part of the social and political fusion ; but the fusion, as it is called, of common law and equity is purely jurisprudential. Prior reasoning might have led to the conclusion, that to carry it out really is impossible ; and that, much as the apparently like, but really different, process of superseding common law by civil law could be assisted by legislation, such supersession would imply the loss of all the valuable traditions of the former. For the tendency of the Roman jurisprudence, which is based more on pure equity than any other, is absolute, and destructive of custom ; always with the reservations, which by its theory are local and temporary, that in application it cannot, completely, ignore tradition and custom. The few years' trial which the new relations of the English courts to one another have already had, has led to nothing but inconvenience ; and the system which was intended was found so utterly opposed to all the ideas and maxims of all persons connected with the law and the courts, that the only way in which justice could continue to be administered at all

was by carrying out that system in little more than name and change of terms. There is one way, in which not a fusion of law with equity could be accomplished, but a merging of equity in law; that is, by conferring (which could be done only gradually) equitable functions on the common-law courts, and ultimately superseding the courts of Chancery and the Rolls. It is more than doubtful whether this would be practically efficacious to as good an administration of justice as we have. Much of the business of the equity courts is executive, and it would be very difficult, and might be impossible, for courts of justice such as the remodelled ones would be to discharge that kind of business; and the alterations might lead to a transference to the general executive of the state, of that mixed judicial and administering power which is more safely placed in the hands of an absolutely independent department. Besides this, the separation of common law and equity is a natural application of the principle of the divisions of labour; it might not be natural if a system of jurisprudence had to be created afresh in a new order of society, such as there was in France after the rule of the Convention and of the Directory; but it is natural in England. The method spoken of is a very different one from that which was designed by the changes effected on the creation of the new High Court of Justice; there can be no doubt that the idea at the bottom of that project was not to add equity to common law, but to transmute common law into some imitation of the civil; an idea proper, no doubt, to the mechanical school of statesmen, who by a kind of instinct distrust tradition, and in their minds clothe law and power with creative faculties which law and power do not possess. A love of apparent uniformity for its own sake is very usual with that class of men—a liking which is based

on purely mechanical ideas ; they often value highly a reform which carries out such a uniformity without any traceable practical advantage ; and zealots of this school sometimes ostentatiously despise the most evidently beneficial changes when they are able to refer them to no more abstracted rule than practical convenience and good public economy. One lesson in legal reform, which we ought to learn from the United States, has been utterly neglected by all classes in this country ; which could be carried into effect easily ; which would violate no public historical tradition, or ascertained and almost sacred jurisprudential principle ; but which would go counter to the usages and to the supposed interests of the members of the legal professions. That reform is, the fusion of the two branches of that profession. We have at present a forced, and not a natural, division of labour ; and, according to law, not even a division of responsibility, for the law throws the whole of that on the lower and least educated of the two branches ; we have also an artificial multiplication of labour, for if the solicitor was allowed to qualify for the bar, the unnecessary necessity of briefing is at once saved. More than this, we indirectly degrade both orders ; we do our utmost to turn the solicitor into a mere machine, whose business is to practise a trade, as it were, with his hands, and never to trouble himself to employ his brains to understand the principles of his trade ; so that we sentence him to remain a journeyman all his days. And we degrade the barristers ; the silly fiction of the fee being an honorarium and not wages, is degrading ; the practice of a barrister retained in a case not being bound to appear in it, only being bound not to appear against it, is demoralizing ; and the practice of barristers taking any case, no matter how foul or dishonest, is doubly demoralizing. A respectable

solicitor will refuse such a case ; but the worse case a barrister has, the more he is applauded if he makes a good appearance. This is a serious public evil ; for it has an effect on our general politics beyond its effect on the lawyers personally ; it is matter of general and frequent remark, that of all politicians they are the most faithless ; for which the maxims of their profession will fully account. It is probably for the same reason that they do not shine as statesmen. During the past three centuries our greatest lawyers have been Coke, Holt, Finch, Hardwicke, Mansfield, Eldon, and Cairns ; of whom adulation will call the first and the last only legislators. Coke shares the honour of the Petition of Right with others ; and Lord Cairns's law reforms have not been very successful. The division of the legal profession into two branches is, it is true, a custom ; but it is not a custom of the public, only an invented custom of the profession. All idols are bad ; *idola tribus* are worse than *idola fori* ; the latter die a natural death, but *idola tribus* are hard to kill.

The gradual change which is proceeding in Indian jurisprudence has some similarities to the attempted simplification (so supposed) of English jurisprudence ; when it shall have approached completion, it will be virtually the supersession of one legal system of mature growth by another of mature growth. When our settlements in India were formed, the English law was as matter of course planted with them ; but for the English inhabitants only, whose conquest of no part of India has ever been that kind of subjugation that empowers the victor to introduce his own codes of laws by mere force. It is necessary, for the protection of a civilized minority of Europeans in any Eastern country, that they shall have peculiar tribunals ; and the difference between the British jurisdiction in India and the

consular courts of the Levant is, that the former is susceptible of expansion by example. In that country we cannot draw so palpable a line, bounding the judicial and legislative functions, as can, and by their constitutions must be, in European and constitutional states; and the natural tendency of the legislature of India is to advance the domain of British law. Supposing that the inhabitants of that country were all Mahrattas, or were all of the type of the Southern Indian Mussulmen, such an encroachment might be impossible; but in the richest and most populous parts, that is in the valley of the Ganges, there is an educated and highly organized people, of all people in the world the most capable of understanding the subtleties either of their own or of any foreign set of laws. No conquest of India has ever been complete; and amalgamations of races, since particularly the Turcoman conquest, have not proceeded after the model of the mixtures of nations in Europe. If the English succeed in remodelling Hindoo law after their own, it will be such a conquest as India never underwent before; and such is not at all unlikely. The particular turn of the wheel in that revolution which attracted a great amount of animadversion in the present year is not of any large importance in itself; that is, it does not mark any very considerable progress in the revolution; the association of the members of the conquered races with the English, in the administration of the country, has already proceeded a considerable way; and the consideration of how and by what steps to make that association closer and more to public advantage is entirely matter of expediency, outside altogether of the principle and of the necessity upon which that association is founded. It is a curious thing, that a small change in the law, which, if at the end of a few centuries it be remembered

at all, will be looked on as a step in the legal conquest of Hindostan, is looked at now by many both there and at home as being a step towards the reversal of the political conquest! No doubt it is productive of some difficulty that legal changes in India must be the work of the legislature, and not of the courts; an artificial appearance is given to what is really a natural process; and the power of marking the different stages of growth causes suspicions to arise, that changes are innovations when they are developments. It is curious also, that the supporters of the admission of natives of Bengal to certain judicial offices fall into still greater fallacies than the opponents of that measure. It has been advocated because it is "based on a recognition of the equality of Indians and Englishmen;" an equality which in no sense of the word exists, any more than an equality between the different races of the inhabitants of India; indeed, the whole social, political, and legal constitution of things in that land acknowledges and is based upon, differences and inequalities. In the legitimate application of the term equality, that is equality before the law, it is evident that this is a great good, but it cannot exist till there is only one law for all men to stand before; and the giving to Hindoos and to Englishmen an equal right, if duly qualified, to preside in courts of justice, is not to give them equality before the law, but rather an equality over it. The proposal was unfortunately brought forward in an ostentatious, pedantic manner, which was injudicious; it is one of the superiorities of the method of making judicial reforms judicially, and not legislatively, that by the former way they can be effected without any undue amount of popular and often passionate discussion, and without a mischievous raising of collateral and not very relevant issues.

The form and shape of the civil law, and of all those adaptations of it which have more than ever prevailed in Europe since the beginning of this century, being much more precise than the form, if the expression be applicable, of the English common law, the former recommends itself more to men whose ideas of society and things pertaining to it are mechanical, than the latter does. Such jurists often advocate, as a remedy for the want of preciseness, codification. To codify our whole common law is not impossible; but this once done, it loses what in the opinion of some of its greatest expounders is one of its most signal virtues, its elasticity. When new circumstances, let us say new inventions and discoveries, produce new properties and new rights, common law is competent on their appearance to take cognizance of them; while if common law was taken up and embalmed in statute, which by its nature is immovable, rights as real as the right of a man to his estate might, and probably would, remain long unrecognized, if they unfortunately had their origin later than the code. English law would be stifled by codification; the only branch of it which is properly susceptible of it is the several punishments due to crimes; and one branch of it, the peculiar and unimitated triumph of British jurisprudence, the rules of evidence, is absolutely impossible to codify without undermining and distorting. We want one thing of the nature of a code—that is a complete and intelligent double index of the statutes at large; and we want it much; and whoever first constructs it will be a public benefactor.

General
public
education.

Very great change has taken place within little more than a generation in opinions respecting the propriety of the state undertaking the general education of the young, and exercising a greater amount of control than formerly over the higher education. It is not difficult to find any reason for that change in opinion. The spectacle of the apparent success of public education in sundry countries where the experiment has been tried, cannot have been without effect; and this success, apparent to all, is, in the judgment of many men well able to judge rightly, real. For two centuries a universal system of elementary schools has existed in Scotland; for one century the like has existed in the greater part of the United States; and ever since the end of the Napoleonic wars the like has existed in the greater part of Protestant Europe, also in the German parts of Austria and Switzerland. So long as Scotland was the only country which enjoyed such institutions, it was the envy and admiration of strangers; under that system, that country became prolific beyond all others of able, intelligent men, competent for positions both of high command and of high service, in varied kinds of public and private employment. Scotland, poor in old times, grew rich under that system; and the country being too small for the numbers, a great migration to the colonies took place; also to India, which has even given a permanent colour to the society and the government of that empire. The success of the public system of education in the United States, in producing a community of intelligent persons, is perhaps equal; and the success of a similar system in Germany is very marked: there the degree of education given has been higher than either in Scotland or in America. In Scotland, the elementary schools, under the plan founded after the Revolution, were managed and main-

tained by the parish authorities ; in the greater part of the United States they are maintained by the township, which answers civilly to the parish in the United Kingdom. In Germany, education is a department of the state. There are in England more educational foundations, the gifts or bequests of men of public spirit in early times, than in any other country ; and most of these gifts consisting of land, which has increased in value beyond expectation, the wealth devoted to the purpose of education has of late times been very great ; the greater part of it being devoted, in some cases according to the design of the donors, and in some cases in opposition to it, to the higher education, intermediate between such schools as the parochial schools of Scotland and the colleges of the Universities. About the beginning of the present century, a vast number of public-spirited persons in England, inspired by the example of perhaps the greatest woman this country ever produced, Mrs. Hannah More, influenced much by the approval and co-operation of the king (in his private capacity as a gentleman), and directed in their operations by an ingenious man, Joseph Lancaster, established over the country in various places elementary or primary schools, of which the founders and their friends bore the expense, except small fees charged to the parents of the pupils. Against the middle of the century, few spots in England were without the means of education for all. About the beginning of the Queen's reign, Parliament began to make grants of money in aid and in improvement of these schools ; inspectors of them being provided by the executive, who were to see that schools which received subsidies should come up to a certain degree at least of excellence, and whose advice to the supporters and schoolmasters might be of benefit. Gradually the Parliamentary grants of money increased,

till they came to millions; the labour placed on the department of the executive which had charge of education became immense; and the opinion gaining acceptance among the public that no child should be allowed to grow up untaught, a new and ingenious scheme was devised, which contains in itself the elements of great success and also of considerable abuse. The inhabitants of districts were authorized to incorporate and tax themselves, through elected councils or boards, for educational purposes. The system as adopted had one defect, which is characteristic of its English origin; it was reduced to be a compromise between the advocates of universal public education and those who were in favour of but little change or none; and instead of establishing the schools and directing the owners of property to support them out of the local taxes, the establishment was left optional with the inhabitants of the district. In administering the schools by means of locally elected boards, a sound and natural system was adopted; for, as the higher education is not, and has never been, under the control of a department of state, but has been confided to independent corporations, it is reasonable that primary and intermediate education shall be the same. A compulsory power was given to these boards—a questionable thing at the best; and we are not without complaints that they exercise it oppressively. There can be little doubt that the area of the corporations is much too large; the difference is practically very great between parochial schools maintained and managed by each parish, the administration of which is matter of personal interest to every parishioner, and within the reach of his criticism, and schools fifty or more in number administered by a powerful board, able to disregard everything but a hostile vote at their annual election, and practically

nearly out of the control of the central government. The state of education in all its branches in France is low, and in Spain and in Italy very low. In Russia and the Danubian States it is said to be improving. The disposition and perhaps the necessity in all those countries is to make it entirely a business for the state.

That sect of politicians and social philosophers called communists has many varieties; there is one particular variety of it prevalent in Germany, whose opinions concerning education are worthy of attention. Most of the communistic schools aim, consciously to themselves or not, at a redistribution of property under some form; that is, robbing all or some of the owners of property, and giving what is neither lost nor destroyed in the process of the robbery to other sets of people or to the community generally. Others are guiltless of such covetous designs; desiring only that all the youth without exception shall be provided at the public cost with an education equal to the best that the richest man can procure for his children with money. They think that not only this would be carrying out a natural right, but that it would be for the interest of the state and of every person receiving the education. The existence of a natural right of every child to receive instruction from the state, of which he is to be a member or a subject, is a tenet which it may be difficult to establish, but there is authority for it, if not reason; one very high authority, Edmund Burke, uses words which may without straining be quoted to support it. If a general system of education be instituted by the state, with the expedient object of making all its subjects as good subjects as it is possible, the matter of how extensive that education shall be is matter of detail and degree. These considerations entirely acquit that school of so-called communists from the general charge of un-

practical fanaticism which is commonly levelled against the sect indiscriminately. The reasoning which leads to the belief in the natural right spoken of is probably this : every child born into the world has a right, by the fact of his birth, to the discharge by his parents of their duties towards him, and to the enforcement of the discharge of those duties by the state ; those parents who have the ability will probably discharge the particular duty of instruction voluntarily ; and failing their ability, or failing their voluntary action, it is the duty of the state to provide the education. Now, the fallacy of this reasoning, if there be a fallacy, lies in the defective definition of what education is. Men, the most enlightened, will differ, as they have differed, in their opinions about this ; parents will differ ; the father and the mother may differ ; but if the state undertakes their functions, it must be absolute, indiscriminating, and dictatorial. All agree that the education which every child ought to receive, independently of who ought to give it, should include at least the three "R's," and should proceed somewhat farther ; it is not necessary to define what are the necessities of intellectual life. But if the state is bound by its duty to undertake the function of intellectual education, its regard to its own interests will oblige it to undertake also the function of moral education ; for those parents who neglect or renounce the one may reasonably be expected to have small estimation of the other ; and if the children are to grow up to be good subjects, they must be taught concerning their moral duties. Accordingly, the state will stand *in loco parentis*, so far as the imparting of instruction is involved. But if the state stands *in loco parentis* in one relation, it weakens the parental status and authority throughout, inferentially if not directly. This is not matter of speculation ; it is

matter of experience. It stands upon the record that parental authority is not in America what it used to be; and close observers, and thousands of observers who are not close, report that since the operation of the school boards in England it is being generally and visibly weakened. While during two hundred years a local parochial system was carried out in Scotland, by its connection with the ordinary social life of the people, it was preserved from interference with the relationship between parent and child; and by its connection with the religious establishment of the country, which there unites itself more with the daily life than in any other Protestant state, it adapted itself to the wants and to the whole spirit of society. The same may be said of the system of primary education in the greater part of Germany, where the old ideas of Church and state, at least among the common people, as yet prevail; and where the people, being a far more unmixed and homogeneous race than in England, are much more easily influenced by artificial means, and rebel against their application much less. The like may also be said of the working of the voluntary system of education which obtained over great part of England during the first half of this century. But here the religious differences of the population making it impossible to organize a general system like that of Scotland, or even like the German system, a new doctrine was invented, which was expected to destroy all difficulties, and, by some of its advocates, to advance education more than it had ever advanced anywhere. A distinction was drawn between religious (or moral) and secular education; and parents were told that the state would attend to the latter, the former being their proper business. If it be the duty of parents to provide their offspring with secular instruction; and if it be their duty to

provide them with moral instruction, this moral teaching being a thing not naturally, but only incidentally and by circumstances, and in all probability entirely erroneously, connected with the three "R's," geography, and grammar; and if the state ought to provide the former, failing the parents' ability, it is not unreasonable to apply the analogy to moral teaching. This is what the secular educationists do not do, and what their maxims will not permit them to do; or, if they do admit any kind of ethics into their curriculum, it is under a fantastical form of utilitarianism, compared with which Archdeacon Paley is sublime.

There is one very strong reason against any general system of education at all; it puts an end to rivalry; it sets aside, in its scope, the law of natural selection. If every school is to be like every other school, and if the chief inducements to the schoolmaster to conduct his school well is to receive a premium on the proficiency of his scholars—to be estimated by "marks" in Greek grammar, botany, and so forth; or to be promoted to another place, where he will receive a larger stipend; in such case he will likely never become a member incorporate of the private society in which he lives, and is deprived of one great reward, which is valued by all men that are not mere pedants—high social position and public usefulness. Whereas, when there is free trade in education, that school will attain the highest character and the greatest commercial success, not whose pupils' "marks" added together mount up to the most thousands, but which turns out into the world the best and most eminent men. There are other reasons against general public education, unless when administered locally, and on a very small area, so that each individual who derives, or whose family derives benefit from it, shall have a direct personal interest in

his own local school. That which is given without cost is not valued. If a man receives a casual gift—of money, for instance—over and above what he earns, his impulse generally is to spend it; and what he receives from the state, the central government, which is to him a large and distant thing which he cannot influence, or what his children receive, neither he nor they will be disposed to value at its proper worth till they come by habit to regard it as a right; and if it be not a right, but a gift, the belief in the right is demoralizing, as is amply proved by the history of our poor laws. Now, what a man buys and pays for, for himself and for those that belong to him, he values; and does his best to get the best that he can for his price; and what he inherits from his father and grandfather he values, and thinks it would be a shame to lose or injure; or what he enjoys as a parishioner, and looks on as his own and his fellow-parishioners' property—suppose the gift of some founder under Elizabeth or James, or suppose the gift of some squire or rich man that he or his father remembers—he will cherish that, and feel a sense of property in it, which is not demoralizing, but the very contrary. Besides, any general educational system on the model of that of the school boards, and not on the model of Scotland, at the same time that it is not favourable to just parental authority, is not favourable either to the cultivation of individual independence in the pupil; and its tendency is to turn out a large number of averagely educated pupils, with their characteristics as little developed as possible.

Education is a spiritual thing; and that which is spiritual cannot with success be governed, and its forms with success be modified, by laws and processes which are mainly mechanical. The school boards of England will be successful in producing a generation of better

taught men in the common branches of learning, in a pitifully small quantity of natural science, and in a sufficient knowledge of art (as it is called) to annihilate any love for real art. The new generation will be apter for some trades, and they will have larger means of extending their learning in a great many directions than former generations enjoyed. There is not the smallest reason to expect that they will be better or really wiser men and subjects, honester or braver, or a happier race than those that were before them. The separation of two things between which a natural and organic union exists, our moral and our intellectual faculties, by artificial systems of education, may satisfy one-sided theorists; but the accumulated wisdom of centuries has not yet discovered a stronger—no, nor a broader—foundation for the instruction of children than to teach them to read the Bible, and to make them learn the Catechism by heart.

All men who are not malevolent rejoice in seeing a community prosperous and virtuous; and the spread of education is a good in itself, whether it would be for public or private advantage, according to the dream of the German socialist, that every young peasant should understand the integral calculus, and every artisan should be able to read Homer and Aristotle in the original. The spread and increase of wealth is also a good in itself; and it would be well if every one in England had meat for his dinner every day. But it would not be well if every one in England was served with meat at the public expense; and it would not be well for mere secular education to extend at the cost of something better. Independence is better than learning. The bishop who said he would prefer to see Englishmen free than to see them sober, may have misapplied a truth, and may have expressed it oddly; but it was a

truth which he uttered. All this, of course, does not apply to those children whose unnatural parents neglect them, or virtually desert them through vice and crime. When that good man, Mr. Watson, kidnapped the stray children of Aberdeen, and compelled them to come in, the whole public conscience applauded; and he set an example to the public which deserved to be followed, and is more or less being followed. There is yet another consideration, which is generally neglected when the supposed duty of the state to find opportunities for education is spoken of, or when the propriety of the state enforcing careless parents to perform their duty is assumed. It is not the function of the state to enforce the performance of every moral duty; if such enforcement were assumed, it would not seldom do more mischief than permitting the neglect of the duty. No principle in this matter has ever been laid down, but examples can be given. A man promises, when he marries, to love and cherish his wife; but the law does not, and should not, interfere with their relations, unless the violation of the contract which he has made proceeds to overt acts of cruelty. A master is bound to be a good master to his servant; but the law cannot define what a good master should do in every instance. A servant's duty is to be faithful; but his master may not haul him before the magistrate for every petty fault. Finally, it appears to be a matter of expedience, and not of right, what position the state should assume in the matter of primary or elementary education of the young. Much good, doubtless, may be done by direction, inspection, and similarly; it must not be so certain that good will result from the state taking the initiative. If it will do so, the erection of independent local corporations is the most unexceptionable system that it could adopt; and the smaller the area of such cor-

porations, so as the materials shall exist to inspire them with vigour, the better.

As the state ought not to volunteer to stand towards the youth of the country *in loco parentis*, if for no other reason because the state never can be a parent; so in the department of what is called the higher education, that is a proper subject for the control of the state, and for the state to initiate and support institutions and foundations to maintain. For the purpose of them is to train members of the learned professions, and those who are likely to serve the government in its various public offices of business, and those who are likely to serve their country gratuitously as legislators; and the purpose of universities is to licence them. It is true that it would be possible to trust to the voluntary system for the higher education; but the university is indispensable; and unless universities are also teaching corporations, there is no reason why there should be more than one in a state; in which case it will unavoidably lower its standard of proficiency in learning so as to match with the colleges from which its candidates for degrees come. This, when stated, is so evident, that it is surprising that it is so little thought of; and the wretched state of learning, and indeed of general intelligence, in France, where there is only one university, or examining body, is a conclusive proof, if such were wanted, of the correctness of the above. The true competition, in the higher education, is between university and university, not between school and school; the competition in the latter case is like an auction turned upside down, in which the lowest bidder wins. It is difficult to conceive a more complete organic society than a university after the model of Oxford, including the colleges; it has one property in a very high measure which is essential to organisms, the power of

self-restoration. In the Reformation times, Oxford was the centre of English intellectual life; in the seventeenth century, it was still a great intellectual force, not always for good, and was declining; before the eighteenth century was more than half over, the supremacy had past questioning gone over to Cambridge, and it lay in lethargy or worse; but when the present century opened, Oxford was the subject of a remarkable and persistent and spontaneous revival; and against its middle, had restored itself to the pre-eminence, or not far from it, of three hundred years before. This was the time chosen by men who called themselves practical to reform its constitution; and they set about this reform by a process of supposed restoration. There were many things in Oxford which were wrong and required setting right; instead of trying to do so in detail, they attacked, as they thought, the root of the evils. So the man in the parable condemned his fig tree for one or two season's sterility, till reminded by his gardener that pruning and manure had not been tried. These Oxford reformers far outdid the man in the parable; for the tree was not at all barren, but had lately sprung into unusual fruitfulness; in their passion they, it is true, did not say, "Cut it down," but in their discontent they insisted on what was equivalent to transplanting it. They preached restoration—restoration of the university to what Alfred had meant it to be when he founded it one thousand years ago, a teaching body; they forgot that Alfred cannot be thought to have contemplated the prodigious expansion which ten centuries would bring, and that his conception of a university was one connected with one college, or at the most with two, and that he never dreamed of five and twenty. Reform, on these lines, is in the highest degree unconstitutional; for it ignores that

which is of the essence of all organic bodies, that is development and growth. The idea of the proper purpose of a university was long ago expressed—we know not by whom—as to teach men to teach themselves; inasmuch as, by another saying like it, he who is taught gains knowledge, and he who teaches himself gains wisdom. All such considerations having been set aside, the tutorial system of instruction, which was closely connected with the greatness of the colleges in their share of university life, was partially overthrown; and the standing of the holders of professional chairs was advanced, the professorships being of the university and not of the colleges. What the late Dr. Pusey said shortly before his death will tell part of the result. “The new plan produces better scholars, but I turned out better men.” He did not tell all the result, for he could not; but in one respect it is a result which he would not have wholly disapproved; and he did not in all probability know that he himself was to some extent influenced by the same tendency which was at the bottom of changes which he thought revolutionary and deeply lamented. The new generation of Oxford clergy has been spoken of in a former part of this treatise; that generation, with its characteristics, is a product of reformed Oxford. The chief innovations of the ritualists consist of what was very faintly foreshadowed by the elder Tractarians, the introduction of symbolisms. Now, symbol-worship—and the taste for symbols is very near to worship—is materialistic; and materialism is a mechanical view of organisms; and the mechanical method of treating social organisms, according to which the remodellers of Oxford have consciously or unconsciously proceeded, is to a very considerable extent responsible for the spread of a disposition which is apparently extremely counter to

the method. If it be true that the majority of the younger clergy are what is called philosophical Radicals, a school of politicians who are exceeding mechanical in their sociology, and exceedingly fond of legislation of the interfering and regulating sort, the influence of the Oxford reforms is still further discernible.

[Perhaps the extent to which the use of symbols or emblems has proceeded is not properly appreciated. There is a new, costly, and gaudy church in the north of England, in which the body of the church is separated from the chancel by three stone stairs. The first of these is of white stone, to represent the state of man in paradise; the second of black stone, to represent the fallen condition; and the third of red stone, to represent redemption. The author of this treatise, when this was shown him, turned away in disgust; he thinks that not in all Roman Catholic Europe could such absurdity, had taste, and virtual irreverence of the kind be exceeded.]

About the time when the changes at Oxford were proceeding, the executive government of England made an alteration in the mode by which its servants in nearly all departments were chosen, chiefly in the department of the civil service. Appointments were given, not in the former way by the system of patronage by great politicians, but as a reward for proficiency in certain branches of knowledge. The system spread, and it has produced a vast influence on the whole of our intermediate and higher education. It has produced a set of men, numerous and influential, who, by the circumstances of their education and what followed it, do generally regard, and must regard, their knowledge as valuable not for its own sake, but for the sake of its money value. This is demoralizing, both of themselves and of the community. Yet numbers of people think the system a great political and social discovery; and a ridiculous caricature of it has been

set up in Ireland, where a million of public money has been set apart to furnish money prizes of small sums to the children of that country who show themselves cleverest in answering questions about algebra, German grammar, electricity, and the like, to what public benefit, or to what benefit of the children, no man is able to tell.

It is matter of great concernment to the state, what system of education it shall patronize, and practically adopt, for those who are to take a share in the government and administration. It is not too soon, after an experience of thirty years, to form a judgment of the effect of educating, or causing to be educated, a large number of men, on the plan of teaching them the largest possible quantity of knowledge, or otherwise the greatest possible number of facts, irrespective practically of any arrangement of that knowledge in their minds. The manner in which the products of this education are tested is very often, if not in the majority of cases, little better than a test of good memories; and the further the system is extended, the more completely the effect will be to proceed further in that direction. When the number of civil servants to be appointed under the examination system was small, it was possible for those to whom the passing of judgments on the candidates was entrusted, to exercise a discrimination of qualities and powers in the candidates, beyond and above such proficiency as admits of being reduced to figures and classified accordingly. But now that the system has attained a great magnitude, and the business of an examiner has become actually a profession, and the relation between him and the candidates is utterly dissevered from the social relation between teacher and pupil, that business has of necessity become merely mechanical. The effect produced by this is advanced

by the great range of subjects in which instruction is required. Quantity, in short, is made of more importance than quality; and rapidity in teaching is of necessity adopted at the expense of thoroughness of teaching. That generation of men to which the present prime minister, the late Lord Derby, Sir George Cornwall Lewis, John Stuart Mill—a thousand others—belonged, were taught a few things thoroughly and logically. What they learned of grammar, of their own language and of foreign languages, of mathematics, and of all else, was both lessons in the subjects of study, and lessons in the science of reasoning. The minds of very few men are capable of receiving more than a limited amount of knowledge, in due arrangement; and knowledge which is only knowledge of facts, and not knowledge of principles, is inferior in kind to that which is thorough. One of the greatest of living mathematicians, in a public address to a learned society, spoke lately with enthusiasm and at length of the great beauty of the definitions of Euclid's fifth book. Formerly every mathematical student was caused to learn these thoroughly; if every one did not imbibe, did not assimilate, what he was taught, it was not the fault of the method. Sixty years ago, the classical languages were taught minutely; their grammar, their construction, the peculiar modes of expression of their authors, occupied probably treble the amount of time which is devoted to them now. This was mental discipline; if much of what was instilled into the minds of the learners was apparently incapable of producing results with some degree of proportion to the labour expended, the method taught the pupils how to think, and made thinkers. The mind of the preceptor and the mind of the student were brought into a relation which is a different relation from that which subsists when the end of teaching is

to fill the latter's intellect, perhaps only his memory, with a large number of facts. No plan could be adopted more fit than such as is indicated, and which is not an exaggeration of what is of late proceeding, to breed up a generation of intellectual conservatives. There is a conservatism of intellect far more deadening and dwarfing than the common conservatism of habit, which has one valuable set-off that the other wants, connected as it is with moral traditions consciously or unconsciously held. The highly (not deeply) educated men of this period are losing the reasoning faculty; and this, directly because their knowledge, owing to the manner in which it has been conveyed, is not deep in proportion to its extent; it is not of principles so much as of the results of principles; it is not of roots so much as of fruits. There is, therefore, growing up in England a society, which more than any that ever was before in this country is liable to submit to the governance of maxims of authority, without the power of referring those maxims, and the ideas which they express, to the principles which underlie them, and is thus in constant danger of making an erroneous use of the maxims. A mental habit like this, though in reality conservative, is by no means inconsistent with a favour towards practical innovation. We are justified in attributing to it, and by consequence to the mechanical plans of education which have done and are doing much to produce it, the late and proceeding increase of artificial and regulating legislation; and in attributing to it also the growing feeling that there is no department of human life, saving its spiritual relation with the Divine Being, which is not proper for the interference and regulation of the state; a feeling destined to work more or less mischief before the inevitable reaction against it comes.

Perhaps it is premature to say, though the suspicion

is not to be avoided, that this revolution in the conception as well as in the system of education is to blame for the present dearth of great men. We have multitudes of able men ; of erudite men ; of great specialists ; of men of energy, both in action and thought ; but we have lamentably few who unite knowledge, ability, strength, and wisdom or originality ; in short, of men of genius. It is often said that this is a chronic complaint ; that all ages make it, and that no generation knows its own greatest men. This is not true ; the contrary is generally the case. The greatest men of all descriptions, that is those whom posterity thinks the greatest—and it is nearly infallible—are the same whom their own contemporaries have held at the highest value : no doubt with exceptions ; but contemporaries are far more apt to overvalue than to rate too low. At the beginning of the present century, the greatest man of the German nation was Goethe, and the Germans thought him almost a god ; the French of the last century were not slow to recognize the genius of Voltaire ; nor the Americans to hold in honour two men, Franklin and Washington, worthy of pedestals in the inner court of the world's Pantheon. One hundred and six years ago, there were living in England four men, each one of whom, as he passed away, left a blank perceptible acutely to society and to every member of it. Chatham ; Mansfield, the greatest magistrate that ever lived ; Johnson, great in literature, great as a moralist, the head, the monarch of English society ; and Burke. There are two men in England now whose deaths, when they come, will leave blanks : the present prime minister, and John Tyndall. There is one in Germany ; there is not one in France ; there is not one in America. When men complain that there is nothing but mediocrity, the reason is not hard to find ; it is that what is great is rare.

Taxation
 "indirect"
 and
 "direct."

The science of sociology has more branches than one ; and what is commonly called economical science is a branch of it. The same maxims respecting the organic as opposed to the mechanical theory of the science of sociology apply to its branches as to the science itself ; and if there be any doubt as to the organic nature of economical science, that ought to be set at rest by a consideration of its primary postulate, which is an ethical one, that men are governed in those things which they do in order to increase their possession of, and their command over, this world's goods by selfish motives ; and of its second postulate, which is one which does not belong exclusively to itself, but is to be held in common with the postulates of ethical science, that the observance of agreements and contracts is a moral duty. All the relations of the state with commerce, which are many, are, or ought to be, governed by a regard to these truths. The reason that any doubt has ever arisen, or can arise legitimately, of the proper placing of economics among the organic sciences, is that in so far as the examination of some of its facts has proceeded, the inductions from those facts are so certain, that they appear, when seen clearly, to partake of that certainty which is analogous rather to mathematical than moral certainties. It is established that, in accordance with a variety or application of the law of natural selection, men will exercise their labour in that manner and in that employment which will be the most productive, of their own accord (that is, when they are acting in the capacity of wealth-producers, and subject to individual misjudgment, the general judgment being unerring) ; and that consequently any artificial direction, by legislation, taxes, bounties, and the like, of human labour, must result in a less net amount of wealth than untrammelled and undirected labour will

produce. It is also established, that that portion of the produce of the general industry which is levied from its owners for the public uses ought to be levied from the net produce of that industry, and not from the labourers in the process of the formation of that net produce, if one purpose of the taxation be, as it ought to be, to avoid interference in the production of the maximum quantity of wealth. It is further established, that all taxes levied upon commodities are in reality levied upon those who consume those commodities, within the area of the taxation. These maxims constitute what is now generally known as the leading doctrine of free trade. The proof of the first of the above three propositions appears as complete as Euclid's proof of the fifth proposition; the proof of the second is not less conclusive than that of the binomial theorem; and the proof of the third is nearly equal in its absoluteness, although the proposition itself cannot be stated in as perfectly definite terms as the other two. There are, in economical science, many as yet unsolved problems; in particular, many of the questions concerning the ultimate incidence of taxation; and those relating to the operation of laws for poor relief. The latter are matters of mixed economical and general social science; and it is impossible that the same kind of certainty can ever be arrived at, in mixed matters similar to the above, and in mixed questions of economics and jurisprudence, as in matters which are purely economical.

From about the year 1840 till the year 1861, subjects of taxation formed so large a portion of the general political controversies of the time, that considerable changes in the financial system of the English administration naturally resulted. With hardly any exception, the changes that were made were in accordance with

sound and ascertained rules ; and the greatest change of all, by which the trade in the chief articles of human and animal food was left wholly unshackled by regulations and taxes, occupied the public attention to such a degree, and was discussed so much in reference both to the principles of commerce and to the effects of interferences with its natural courses, that it is not surprising that general correct maxims of trade legislation should have come to be received in England as conclusive and indisputable. The dispute was concerning a trade, that in the materials of food, which affected every member of the community ; and, once that the matter was decided, general public attention ceased to be directed with the same interest as while the controversy was proceeding, to the principles underlying it. Since the year 1861, no considerable emancipation of trade from taxes, with the exception of the abolition of the import tax on sugars, has taken place ; for it is impossible to look on the slight, and not permanent, diminution of some import taxes as anything considerable. There is more than one reason for this sudden cessation of financial reform. It will be in the memory of those who were living in 1846, when the corn duties were done away with, that that repeal was consented to generally far more because its expediency was evident, than from any recognition of the necessary and essential evil of such regulations ; and that the repeal was specially popular, because it was thought, as it is now known, and as it was known then to the best economists, erroneously, that the effect of the food taxes was to increase the fortunes of a certain class. The same spirit—that of regarding rather the probable effects of the remission of special indirect taxes and trade regulations, than the solid principle which dictated such remission—pervaded the discussions on the particular points as the

free trade movement went on ; and there was no general popular enthusiasm to be excited concerning the navigation laws, or the excises upon even such useful articles as soap, paper, and leather gloves. Not that the theoretical, as well as the practical, view, was by any means entirely neglected ; and public measures, which are adopted from a conviction both of their intrinsic and of their circumstantial propriety, are less likely to be gone back upon, than those which are adopted on grounds of mere expedience, or upon grounds of their essential propriety independent of their probable expedience. Accordingly, on the only occasion within very recent years that a proposal was made, violating sound economical principles of taxation—the match tax—the proposal was received with universal and fatal disfavour. A chief reason that the progress of English financial reform came at the period indicated to a sudden stop, was that many of the most popular and able exponents of the doctrines of liberty made a distinction between certain examples of indirect taxes which is entirely arbitrary and referable to no ascertained or ascertainable rule. They held that a tax upon imports, enacted for the purpose of favouring the manufacture of goods at home, which might supplant or limit the use of the foreign goods, the importation of which was burthened, is a more mischievous and more unjustifiable tax than an import tax on goods the like of which are not and cannot be produced at home. This distinction is commonly drawn by defining the two kinds of import taxes (or customs duties) as “protective” and “revenue” duties. Now, as the effect of every prohibition of the freedom of trade, or financial burden laid upon it, is to divert the course of trade and production into channels which are not its natural channels, it is evident that the

diversion of trade and the consequent diminution of the productive results of industry will be according to the actual amount of that diversion, and not according to the intentions of the framers of the regulating or taxing laws. A protecting tax is intended to favour some special manufacture; and as it very often has happened that the protected manufacture does not really prosper under the influence of the protection, it might almost appear as if such a tax diverted the course of trade from its natural channels less than a tax equally productive to the exchequer levied on goods the like of which could not be manufactured or even imitated at home. A very large portion of the British customs revenue is derived from tea. Supposing there were no duty at all upon that article of food (which it is), and that in consequence the cost of every pound to those who use it were reduced perhaps one-half, it can scarcely be estimated how great the extension of the trade between England and the far East would be; and supposing there was no duty at all upon the wines of Spain and France, it is impossible to estimate how much our trade with those countries would increase, and how much the consumption of heavy beer and porter would diminish. Compared with such things as these, the protective duties on gloves and silk ribbons, while they lasted, had a trifling area of effect. And yet there is only one leading and influential economist, Mr. Bright, who has not ceased for the last twenty years to lift up his voice in advocacy of a "free breakfast;" and the bulk of the English population seems equally passive with the generality of economists on this subject, although the money which the tea tax brings in nearly all comes from the common people. In other ways, political economists have of late been singularly remiss; they have never tried as they might to impress the

essential truth of their doctrine of liberty in those quarters where they have, or ought to have, influence. It is a serious blot on the administration of India that the state of that empire derives a very large revenue from what in all countries, and in none more than in those where rice is the principal food, is a necessary of life, salt; and it is more than a blot, it is a setting aside of common morality, that a large portion of the soil of that country is compelled to be planted with what is nothing but a poison, to be forced at the sword's point on a foreign and (but for this) friendly population. The voices that are lifted up against these iniquities are faint; and there are other evils, perhaps not equal to them, in other of our colonies. It came only lately to be generally known that a considerable portion of the revenues of the various West Indian islands is raised from heavy taxes on imported grain. Since fifty years, while the trade of all the world beside has been expanding, those islands, rich by nature, and once the most prized of all our external possessions, have been stagnant; those taxes alone are sufficient to account for their condition; and, especially considering that many of them are directly subject as crown colonies to the Privy Council, the existence of such shackles on trade and industrial life is a deep reproach on England. In 1860, the treaty of commerce between this country and France, which has been allowed within a short time from now to lapse, was negotiated; and on that occasion an opportunity was lost, the like of which may not occur for years, of enforcing on the minds of foreign peoples the principles which had guided English financial legislation up to that time. In order to obtain a partial application by France of those principles, our negotiators surrendered the principles themselves; they condescended to make bargains, and to allow to be represented as concessions

what were really amplifications (or should have been) of the sound policy which they had till then pursued. It would be wrong and absurd to depreciate the great services of Mr. Cobden to the cause of free trade, but it cannot be doubted that his convictions on commercial subjects were founded on grounds rather empirical than philosophical. One expression which he used in discussing the general financial policy of England will explain the effect of this; he used it long before the French treaty was thought of, before even he had entered on his great oratorical career against the corn laws. "You," he said, "set great value on the amount of your exports to foreign countries; you ought to let your exports take care of themselves, for foreigners will buy what they want, and you ought to look chiefly after your imports." This view contains a fallacy converse to that which he was contending against. It is possible that the line of reasoning into which Mr. Cobden was forced during his course of speeches and lectures against the corn laws may have confirmed his habit of regarding all questions of finance empirically. Yet when he came to negotiate the treaty, he neglected things which most ordinary practical men would have taken as of the first importance in guiding their proceeding: he appears never to have informed himself of the details of the French financial system which he was about to assist in reforming; his whole endeavour accordingly was, to obtain from the French government as great an amount of diminution (not abolition) of the taxes on articles of British production as he could, giving chiefly in exchange what was practically a preferentially low English tax on wines the produce of France. So that the greatest practical economist of the time, in order to obtain a partial, and to a great extent illusory, extension of freedom of trade, was content to allow to be enacted

by England a protective duty in favour of the products of a foreign country. Mr. Cobden's negligence in not providing himself with information concerning the financial arrangements of France led to one curious and very improper omission. One item of the treaty agreement was the abolition of the English tax on paper of foreign manufacture, so soon as the internal excise on that article should be removed (which removal was delayed for a year, owing to the culpable and unworthy jealousy against Mr. Cobden of a political faction). While the English regulating laws had hitherto loaded the manufacture of that necessary of commerce, not to say of civilized life—paper—with a heavy tax, the French laws had favoured it (or tried to favour it), by forbidding the carrying out of the country the materials from which paper is commonly made; which prohibition was not removed; so that by the treaty arrangement one set of manufacturers was provided with a fountain of supply of their material, while another set was forbidden to draw from the same fountain. The operation of the treaty lasted twenty years. There can be no doubt that, at the time of the arrangement, Mr. Cobden, and most economists both in England and other countries, anticipated an immediate and large extension of the freedom of trade, in partial and complete removal by various states of imposts which interfered with freedom. Their disappointment is due both to the radical error of having made a treaty at all, and also to the effect of the provisions of the treaty. By the newly arranged taxes on various kinds of wine, the Englishman who drinks a bottle of common Spanish wine, worth little more than a shilling, is taxed two or three times as much as the Englishman who drinks a bottle of the most delicate wine of Bordeaux, worth perhaps ten shillings. This absurdity offended, and to

this day offends, the Spaniards, which is not surprising ; and they exhibit in their commercial legislation a hostility to this country, and a desire to deal for what they require with other countries in preference, which our own legislation prevents us from resenting. The treaty with France had another operation, which was directly contrary to the expectation of the English negotiator. The amount of English goods brought into France before it had been very trifling, as the taxes levied on their introduction had been so great as to almost prevent trade at all ; or there were absolute prohibitions ; and under the new tariffs the importations increased very considerably, to such a point that the revenues which they produced became a sensible item in the total of the French exchequer. It thus became more difficult to the French government to remove the smaller duties than it had been to lower them at the making of the treaty ; and the existence of a treaty practically estopped the English government from making any representations. That country with which England has larger commercial dealings than any other, the United States, becoming engaged, just at the time when the arrangements with France were entered on, in a long and unusually expensive war, imposed on its citizens a taxation which in any country not furnished by nature with great resources for producing wealth would have been oppressive and crushing. The larger part of those military expenses was defrayed from taxes on imported goods ; and a vast system of a tariff was adopted and became permanent, which is both "protective" and "revenue producing." It was, or appeared to be, the interest of many Americans engaged in manufactures to maintain this system ; and they have succeeded in persuading multitudes of their fellow-countrymen that they actually levy these taxes not from

themselves, but from foreigners. When educated English economists point out that they are really taxing themselves, and taxing themselves far more by diverting the natural course of trade and production into channels that otherwise they would never follow, than by the mere amount of duties which are collected at their custom houses, they reply that these are "revenue duties," which, according to admissions of the English themselves, are not illegitimate as "protective duties" are; and the English economists, who have compromised sound principle as they have done, find it difficult to answer. It was expected by the framers of the French commercial treaty of 1860, that a nation, supposed to be so logically minded as the French, would speedily become converts to sound commercial doctrine. This logical-mindedness of that people is often spoken of: sounded accurately, it appears to be only apparent; for there is no people more apt to become slaves of a phrase or pretty maxim, which they admire rather for its brilliancy than for its flawlessness. It is to be remarked that at the present time the most liberal commercial codes, excepting that of England, are those of Belgium and of Austria.

No matter how much the progress of correct economical principles may be delayed, both in their acceptance and in their application, their ultimate adoption may justly be looked for with as much certainty as that with which, in the time of Newton, educated men looked for the universal acceptance of his philosophy. The right to trade freely with all mankind, one's fellow-subjects and foreigners, except when forbidden to do so on their becoming rebels or enemies, may not be a right standing on the high level of that according to which religious liberty is sacred; but by the time when free trade shall have prevailed all the

world over for a generation or two, the absoluteness of the right will be considered as essential as the absoluteness of the right of every man to worship God as his conscience or his choice dictates. As England has shown the way, it will become England to be foremost on the road. At present about one-half of our public revenue, or forty millions per annum, comes from taxes on commodities; and a portion of the other half is equally objectionable—sundry of the assessed taxes for instance. Supposing that all customs and all excises were dropped, the forty millions which they produce would have to be provided by direct taxation; and if the income and property tax was increased to make up the amount, a less rateable contribution would be sufficient than was levied upon real property during the greater part of the reigns of William and Anne.

[The land tax, the history of which during more than a century is curious and interesting, was adopted at the commencement of the war against Lewis XIV., which the maintenance of the revolution settlement necessitated; a valuation was made of all the real property in England according to its annual value, which, during the last ten years of the seventeenth century, appeared to be rather less than £10,000,000 sterling (at present it is £180,000,000). The tax rose as the war proceeded to four shillings in the pound, producing nearly £2,000,000. We do not know certainly under what consideration it was that the valuation of William III. became practically permanent; that is, that it was taken as the basis of future valuations for taxing purposes. It so happened that it was so; and accordingly the land tax, although its poundage varied from year to year according to the votes of the House of Commons, became in reality a rent, and not altogether a tax. At the time when it was first imposed, it was a remarkable and convincing proof of the high patriotism of those who made it, and who, it is not to be forgotten, paid it; for the House of Commons was composed nearly altogether of

landowners. The extraordinary weight of the tax, which fell in amount at the end of the first revolution war, and was regarded as a war tax, will fully account for the impatience of public expenditure, which was so conspicuous when the danger was over, and for the jealousy against any continued military expenditure. The same consideration applies to the general wish for peace among the landed class during the war in Queen Anne's reign, and the pressure for it by that class in opposition to the opinion of the statesmen. In Walpole's time the land tax fell to a shilling; in 1798 it was fixed for ever in the form of a rent, which it then finally became, and was made commutable.]

The difficulty which is often suggested when a proposal is made to abolish indirect imposts, that is of where and how to find the money without their means, is not a difficulty at all. That which the state requires can only be had from the produce of the labour of the community; that is, either from their accumulated property, which is called capital, or from the excess of what the several members of the community have produced over and above what they have consumed; and it is not financially easier, although, owing to the prejudices and ignorance of men, it may be politically easier, to raise the state's supplies by indirect than by direct methods. It is quite true that, if what is spoken of above were adopted, an increase of the income and property tax and an abolition of all indirect taxes, many persons now paying a great deal would then pay nothing, and many persons now paying a very little would pay a good deal more; and adaptations of our system of direct taxation would be required, so as not to permit whole classes of the community to be altogether relieved from the contribution which, in some form and in some amount, all members of the commonwealth ought equitably to contribute to its maintenance. But even supposing that no such adjustment were made,

and that the poundage of the income tax was at one stroke increased five or six fold, the whole trade of England being at the same moment emancipated from all financial weights, it is not too sanguine an expectation, that in a very few years the wealth of the owners of real property would not only surmount the diminution, but would surpass what it is now ; for the increased productiveness of labour, joined to increased activity in producing, would, as the like has always done and always will do, produce a greater demand for that real property and a rise in its value, saleable or annual as may be.

There is one set of indirect taxes, which is commonly supposed to differ, in respect of the object of their imposition, from others ; for while every tax, and consequent enhancement of the price of the commodity taxed, must be regarded as evil to be avoided if possible, when the commodity is one the use of which is innocent, or tends to the profit or enjoyment of the consumers, the reverse has in too many cases to be said of manufactured strong drinks. It is, therefore, common to discuss questions of the duties upon these, both in respect of the revenue they will produce, and of the effects on the general health and morals which greater or smaller duties may be reckoned to have. Financially, there is a very peculiar difference often to be observed between these taxes and others : it has occurred, at least in recent times—and if we could ascertain the facts and figures in former times and in other countries, we should probably find the like—that every diminution of the tax upon a given commodity has been followed by an increase in the consumption of that commodity, often so great that the smaller tax has produced actually more revenue than the larger ; and, conversely, that every increase of an indirect tax has lessened consumption ; but that this rule does not hold good in respect

of alcoholic drinks. It will be enough to refer to the last increase of the duties on spirits, now several years back, as an instance. Were there no other reason than this, there would be good ground for the opinion, that sound economical principle is not outraged by taxing the consumers of beer and spirits as it is by taxing the consumers of tea and other innocuous beverages, the alcoholic substances seeming almost to invite taxation. Beyond this consideration, there is the necessity of exercising through the ordinary police a very close inspection and control over the trade in drinks; which inspection is easily combinable, although it is not combined under our present administration, with the collection of the taxes on the drinks. It is not to the purpose that these things are harmless when properly and moderately used; if they were generally properly and moderately used, there might not be the same reason for interfering with the trade in them that there is under the acknowledged fact, that they are fruitful of vice and even of crime. In addition, supposing that all the present indirect taxation were transferred to the payers of income tax and house tax, a very considerable portion of the community who at present contribute to the state through the excise, and that portion, it is not unreasonable to remark, who give the commonwealth the most trouble, would escape without any contribution, unless they were taxed through the means of what they drink. Although there are these reasons in favour of taxing manufactured drinks, or rather of taxing the consumers of them, the manner of carrying out that taxation is full of faults, and is founded on an oversight of the principle contained in the second proposition in page 131, viz. that no tax should be laid upon any industry (and consequently on the product of any industry) while in progress, but should be laid

rather upon the nett product of the industry. Within a very few years back, one violation of this rule was removed by the substitution of the tax on beer for that on malt, the necessary material of it. The chief fault remains, which is, that there is both an excise on the manufacture, and also a license tax on the seller by retail. Also, the sellers by retail are so numerous, that proper inspection is difficult; and one thing, to prevent which ought to be one of the chief purposes of inspection, that is, the adulteration of drinks, is completely neglected, although there is reason to believe that it is fearfully prevalent. Our licensing system is absurd. Boards of magistrates meet to grant licenses, and pretend to judge of the amount of accommodation (the usual way it is called) that a certain district, or, in towns, even a certain street, requires; it is not remembered that the only test, commercially, of what number of public-houses is required is the same test that decides what number of shoemakers' shops is required—the operation of demand and supply; and that the test of what number of public-houses is required to supply the moral wants of a district is not yet discovered. It seems reasonable that any trade which by its nature ought to be specially under state or police control, as this ought, should not be allowed to be subject to the ordinary laws of commerce in the same manner as ordinary trades are and must be, but should be erected into monopolies, and that the privileges of those monopolies should be sold to the highest bidder. London contains four millions of inhabitants, dwelling upon about fifty square miles of ground; there are in that space nearly eight thousand shops at which drink can be procured, or about one place every one hundred and thirty yards. No one will say on consideration that this is not a great deal more accommodation than

can be required by the actual and moral wants of the population ; the demand for drink must of necessity be maintained by the unhealthy habits of the people, encouraged and fostered by the facility of obtaining the drinks. If monopolies were granted to the highest bidders for the privilege of retailing alcoholic drinks, giving a certain area—say a quarter of a mile square—to each shop, there cannot be the smallest doubt of several things ; the incitement to drink would be diminished immensely ; the inspection by the police authorities would become easy, both the inspection of the shops themselves and of what would be sold in them ; and the rents of the monopoly privileges would be very great. The number of public-houses in London would, on an area of a quarter of a mile square to each, be reduced to about six hundred ; certainly not more than eight hundred. It would be matter of arrangement, under a system of this kind, how to regulate the trade in alcoholic drinks which are delivered to private persons for domestic use ; but this presents no difficulties very great, much less insuperable ; the principle of the arrangement being, that a revenue should be derived in only one way, by licenses, and that all excise should be abolished ; this being the only practical method by which adulteration of the goods could be kept in check. It is to be observed, that to the success of this, or any other project for bringing under that control which is almost universally recognized to be expedient, the trade in drinks, a consent of public opinion would be necessary. Public opinion would not support total suppression of that trade ; and even if it did, such suppression would be found eventually impossible. There is a craving in the human constitution for stimulants, either physical or moral ; and no human laws, and it is reasonable to believe, not self-discipline itself, will

extinguish this disposition. Legislation which follows opinion is safe ; that which goes before it may sometimes be successful ; and in order to ensure its successfulness, it should be based on not alone essential moral grounds, but also on a reasonable expectation of success, and on a regulation, not a suppression, of the habits and instincts of the community. If, in any regulating legislation of the nature spoken of, prohibitions, restrictions, and penalties should be drawn too tightly, the danger would be great ; the danger, not alone of a turn or reaction in public sentiment, but also the danger of diverting the taste for stimulants into new and unwonted modes.

The free trade principle is an honest principle, and it is a just principle ; and when this is said, though all is not said that may be advanced in favour of its universal adoption, enough is said to recommend it to the consciences of men as worthy of admission to a place on the tables of stone, on which should be inscribed "The Principles of the Commonwealth." It was hoped by many when the corn laws were repealed, and afterwards, when, as they thought, a foundation was laid for real freedom of trade between the inhabitants of this country and those of France, that a "new era" of international relations had been begun ; they imagined that one main and fertile source of disputes, leading to jealousies and hostilities, was about to be removed. It is not surprising that such delusions should have prevailed ; for, with but small exception, the school of economists which was most prominent before the public of England in the last generation—the most notable exception being the late Mr. Mill—was composed of men who were entirely ignorant of all jurisprudential science except that branch of it which takes cognizance of commerce. Not one of the great wars in which England has been engaged from the commencement of

our existence as a nation has been about trade ; and the expectation that the uniting of the two nations, English and French, by commercial bonds, would put an end to jealousies which might arise from matters which have nothing to do with commerce, but have their root in the intrinsic differences between Teutonic and Celtic peoples, was, if not absurd, at least groundless. It is not out of place that, in a treatise written in the year 1883, these things should be spoken of ; for there has been amongst educated men during the last few years a disposition to depreciate the importance of the practical results of the commercial legislation which was initiated under Huskisson, and carried to a good degree of completion, although it stopped short, under Sir Robert Peel and Mr. Gladstone. The demand for what is called "reciprocity" on the part of foreign nations is not absurd ; the specific form which, on the part of some, it has taken, is. It is matter of regret to those who are able to regard these controversies, if they have proceeded so far as to be justly called by that term, from a determined and philosophical point of view, that they should have been discussed by the defenders of the legislation which those great men promoted in far too empirical a spirit. The fact is indisputable, that since 1842, under a system of greater liberty of trade than before, the foreign commerce of England has increased in amount nearly fivefold ; and on the other hand, it is before us, that the foreign commerce of France, and that of the United States, and that of Germany, under systems of regulation adopted from different grounds from ours, have also largely increased. When this latter is observed upon, it is too common for the advocates of perseverance in our policy to make specific objections to changes ; instead of standing upon the sound principles enounced by Sir Robert Peel,

when he said that one and the chief maxim of trade is to buy in the cheapest market and to sell in the dearest. If the prejudiced and ignorant men—it is not fair to say, for we may not impute such, the interested men—who dictate the regulations of France, America, and Germany, forbid us to sell in all the dearest markets we can find, it is a remedy for that evil which does not commend itself to reason, that we should forbid ourselves to buy in the cheapest; and that is the proper reply to make to those who recommend any attempt to extort reciprocity from foreign countries by establishing new tariffs in this.

There are various opinions respecting the ultimate incidence of indirect taxation; probably there can be but one as to the incidence of a direct tax on annual income, whether derived from direct labour or from the accumulated product of labour. Generally, there seems no sufficient reason to suppose that the incidence of indirect taxes is other than the lowest or farthest point to which their fall can be traced; this will point out as the ultimate payer of a custom or excise duty the consumer of the article. But the first consumer may not be the real consumer; for if he uses the excisable goods in his manufacture, selling that manufacture when complete for his livelihood and profit, he will be able, in an ordinary condition of trade, to add the tax on the goods he consumes to the selling price of his manufacture. It might be supposed, this being so, that if taxes were laid upon the essential necessities of life, as grain, salt, butter, firewood, and coal, then that the immediate consumers of these things, that is labourers of all kinds, would be able to exact on account of those taxes a larger amount of wages or pay for their labour; and yet we know by trial that this is not so. For no one can believe that the wages of labour in Hindostan

are higher on account of the salt tax, or that they would decline were that tax either suddenly or by degrees done away with; and it is not the case that the repeal of the corn laws led to any diminution of the price of labour in England, although many men, and not all of them uninstructed, believed before that repeal that such would be its effect. There is no reason to think, that if the tax on the occupiers of inhabited houses was suddenly, for instance, doubled, the price of any article whatever would be affected; and this would be a tax upon one of the necessities of life. On the other hand, if an excise were placed upon coals, leviable at the pit's mouth—though that excise would be paid by every one who uses coals to cook his food, the iron-smelter, who burns three tons of coal to make one ton of pure metal, would recoup himself for the tax upon his coal by the addition he would make to the price of his iron—the tax would operate as though the natural cost of production increased. It is well known to merchants, and to all practically acquainted with commerce, that changes in prices such as the above take place not always suddenly; that the flow of commerce, like the flow of water, takes time; and that whether a change of price of a commodity occurs soon or late on a change in the cost of producing it, depends upon circumstances as much as the rapidity of the current of a stream depends on the breadth of the banks, and the depth and inclination of the bed. No rule involving a principle has been arrived at respecting the incidence of taxation; generally, its incidence is not hard to trace; but although labour is the constituent of all value, yet, regarding the circumstances as usual, there appears reason to believe that no tax upon the exercise of labour or upon the necessities of life is generally recouped by an advance of the price paid for the labour. If so, all taxes upon com-

modities of daily use, tea, beer, etc., are paid ultimately by the consumers; and direct taxes upon income and property are paid by the earners of the incomes and the owners of the property. It therefore becomes a political matter, in the usual meaning of the term political, what system of taxes a nation shall raise its public revenue by; a matter important not alone financially, but important as to the residence of the political power that imposes the taxes. The history of taxation in England is a subject which has not yet engaged the public attention as much as its importance deserves; it has generally been noticed in parts only, and not generalized; there are a few considerations respecting it which commonly escape observation. The whole course of English commercial legislation during the eighteenth century was chiefly dictated by the upper mercantile community; taxes affecting our external or foreign trade were imposed or removed, and very seldom removed, with the object, which was in no way concealed, of confining the consumption of both England and the colonies to goods of English manufacture. The gaining of a revenue to the state by taxing foreign articles was apparently a secondary object: the chief sources of the public revenue being, at the commencement of the century, the land tax, the excise, and the duties on tobacco and wine; these last being less in proportional amount than our customs at present are to the whole. The land tax represented to our ancestors of Queen Anne's time the income tax of our days; with the differences, that the trading class did not pay the land tax, and that the percentage of that tax upon income was when highest twice as great as the income tax as rearranged for the purposes of the war against Bonaparte in 1806. It is probably more than a coincidence, that during the reign of William III. the landed gentry were

more impatient of the war, and of the expense of a military establishment after it, than the trading community was; and that during the last few years of Queen Anne's reign the opposition of the former to the war was successful, even at the cost of the honour of their country. It is common to ascribe the controversies of parties during the years that followed the Revolution to their political affections; but it is reasonable to ascribe, in part, at least, the pacific disposition of the country gentry, who were mostly Tories, to the pressure of taxation; and the warlike spirit of the city, which was thoroughly Whig, to their exemption from war taxes. What is most remarkable about this is, that it was those men who imposed the taxes that paid them. The land tax had been granted in the first instance as a compensation to the state for the conversion by Charles II.'s parliament of military tenures into common socage; under which view there was a certain equity in regarding it as a species of rent, to vary as voted year by year, but not to vary by a change in the valuation. The original valuation was preserved as a basis for later ones; and it would appear as if some attempts were from time to time made to enforce complete revaluations; for when, about 1780, the first proposals for Parliamentary reform were debated, it was said that the disproportionate representation of the poorer counties, such as Cornwall and Wiltshire, secured them from being injuriously dealt with through the operation of the land tax. (Burke's Correspondence.) It was a mark of no small amount of patriotism on the part of the landed men of England, that, in the two wars carried on during nearly twenty years to prevent Lewis XIV. from sending a Pashaw to London, they taxed their own incomes twenty per cent.; they were rewarded by the confidence of their fellow-countrymen; for when,

in less than ten years after the end of Marlborough's war, the severest financial crisis in English experience occurred, it had no political effect, and was absolutely unattended by any clamour against the governing class ; and the landed aristocracy remained for another century at the head of the strongest society that ever existed on the face of this earth. During the concluding years of the eighteenth century a like and still vaster war commenced, in which our national existence was again imperilled. The financial strain was then far severer ; for the sixty millions a year which it cost to fight and conquer Bonaparte was more, compared with the resources of the commonwealth, than the four or five millions a year for a like term of years under Queen Anne, which it cost to wrest West Germany and Belgium from the French king. But the governing aristocracy under Pitt and his successors did not imitate the example of their ancestors, the Revolution Whigs ; they loaded trade and industry with impost upon impost, till they groaned under the burden ; and taxed themselves, and the upper classes of traders, only two shillings in the pound on their incomes. Were it not that at that time English society was floating on the crest of one of those waves of advancing wealth which are now and then borne on in the tide of commercial progress, this country, in all human probability, would have succumbed under the operation of such a system. Ten years after Waterloo, a financial crisis, second only in greatness and disaster to the storm of the South Sea, overtook English commerce ; and this time not without political results ; for on the very first opportunity, which did not tarry for long, the trading classes of the people forced themselves, as they had never before done, into political life, and secured more than double the weight in the councils of the nation which they had possessed

by the old constitution of the House of Commons. The effects of the selfishness of the landed class is not yet over. The second Reform Bill was passed thirty-five years after the first; and it is not impossible that, even without the assistance of a third, our system of taxation may be altered, leaving the political power in one set of hands, and the financial burden on another set of backs. This will be retribution; not that retribution is always just, much less that it is always expedient; what would be just, and expedient too, is that the Houses of Parliament should now, at this time, so reform our financial system as to leave no more excuse for "organic reforms," the effect of which must be to undermine the strength of the society, if not the society itself. It is bad for the members to rebel against the belly; it is worse still for them to rebel against the head.

The example of the United States is often cited against free trade and direct taxation. Independent of the consuming desire on the part of the American people to pay off their public debt—a desire honest and in all ways to be respected, apart from the measures they take to pay it off—there are other reasons which they avow to account or apologize for their system of protection to manufactures. They think that it makes them more independent to be able to produce all things they want for themselves; an error, it is true, because those who sell are as dependent on their customers as their customers are on them—perhaps more so; but a political as much as an economical error. The only things that a nation ought to be bent on manufacturing at all cost for itself are guns and other warlike implements; and those ought to be made by the state in its own workshops and arsenals, for it may want them at the moment when the course of commerce would fail for want of speed. The Americans have also a subtler

reason for their trade policy ; they think that a manufacturing population is more cultured and civilized by its pursuits than an agricultural one ; and that by their encouraging the best workmen in Europe, by their artificial high prices, high wages, and high money expenditure, to come to them, they are raising the intellectual average of their community. It is ingenious, but not unanswerable. Suppose that they are right, it is only a conjecture ; that a system of liberty is best economically, is certain. And the analogies of nature are in favour of liberty joined to cultivation, not of forcing. A hothouse produces the finest grapes ; but hothouse grapes do not make wine. Even in the example, the American doctrine as above helps to defeat its own object ; for if they teach their own people that manufacturing pursuits are the most civilized, and force their most talented members into them with bribes, they detract from the strength and quantity of civilizing elements in the backwoods, where they are the most required.

Media of
exchange.

From very early ages, the coining of the money which was to pass current and be the regulating measure in dealings of trade between men, was a prerogative of the king or of the state ; jealously watched, and when infringed, sometimes visited with the punishment of treason. The jealousy descends to modern times, but not for the same reasons ; the prerogative of coining money is now never used for the purpose of robbing the community by depreciation. The last time that a king of England practised that dishonest expedient was when James II. reigned in Dublin ; and the last imitation of it in our history was the issue of Wood's halfpence.

Over-issues of irredeemable promises to pay are not of the same degree of heinousness ; for though repudiation often comes in the end, the banknotes are always put out at first with the intention of calling them in when altered circumstances will allow it. It was so when the thirteen colonies issued their notes ; and it was so with the assignats of the convention in France ; when the promises were not kept. It was so with the Italian government quite lately ; and with the United States in the civil war of 1861 ; when the promises were kept : and probably the Austrian and Russian governments will resume silver or gold money at a convenient time. The calling down of money, when four or five ounces of silver are made to do duty for a pound, has always been with dishonest intent, as under the governments of Northumberland and Mary Tudor ; and the recalling or restoration of the currency is what has very rarely occurred—once only in English history, at the opening of Elizabeth's reign. No such reason for the care with which the prerogative of coining money was guarded in ancient times exists now ; the reason of it is for the public good alone, so that men may know what they buy and sell their goods for. There are, however, misconceptions as to the proper function of the state in so coining money ; the chief misconception being that it is the duty of the state to provide its subjects with a currency or circulating medium. If it were its duty, it would be its business to fix what that circulating medium should be ; and it might enact a system of tokens. But the common consent of all men in all known times having for their scarceness and for their intrinsic qualities attached a high commercial value to gold and silver, and having fixed both of them or one of them as the standard into which all other values are translated, the fixing of the weight and denomination

of coins made of either, or both, of those metals, and stamping or authenticating them, and no more than this, is the proper function of the state, in regard of its care of the circulating medium. Its action in the matter is not enacting but declaratory ; for it gives, or should give, the force of law, and the exactness of regulation, to that which before was matter of usage only, and which required the sanction of law for the purpose of enforcement, and not in the character of creation or initiation. The same principle ought to be applied in legislation respecting promissory notes ; how, is generally matter of expedients ; but that it is correct respecting metallic coinage, is nothing more than stating an experimental fact. It is, accordingly, an error in language, which conceals an erroneous conception of the facts, to speak of the state, or its mint, as being the issuer of money ; all that the mint does is to stamp and authenticate the value of that which has its value independent of the stamping, though the stamping gives it the legal currency ; the real issuer being he who puts his new-coined money into circulation in the social world of trade. In some nations, silver has been fixed on as the metal into the value of which all other values are translated (or to the value of which all other values, or prices, are referred) ; in others, gold ; and some nations have adopted both, giving the buyer of goods a choice whether he shall pay the promised price in a certain number of gold coins, or in a certain number of silver ones. In those nations which have established silver as the measure of values, it is not only usual, but universal, to receive indifferently the ordinary legal gold coins of other countries at their ordinary commercial value ; and in the same manner, when the established legal currency is of gold, silver coins are taken at their ordinary commercial value, a little being bated on

account of the greater cumbrousness of the less valuable metal. Accordingly, the whole world of commerce carries on its affairs rather through gold and silver, than through gold or silver; the utility and the use of those metals as media of exchange being based on the universal consent of men prior both in time and in reason to the laws of various nations which have given to that use their regulating sanctions. The more extended and cosmopolitan the growth of trade, the more practically important it becomes that there should be the smallest and the most easily calculable fluctuating differences in the relative values towards one another of the two metals; and seeing that the use of both is matter of common and universal consent, the moral argument in favour of the so-called bimetallic system as the basis for the coinage and lawful currency in every state is unanswerable. The practical inconveniences, to call them no less, which have been the consequence of the cessation in England of what is called the double standard have been very great; and it is remarkable, and, could events have been foreseen, it would have been an absolute perversity, that the change in the English standard was made just when the commerce with India, where silver has been used immemorially, was about to expand to great proportions. It is certainly what civilization, which is the carrying out of good order, requires, that there should be in the same political community no variety of coinages; and by establishing gold as the English standard, while silver remained the Indian, an amalgamation of the two currencies, though not made impracticable, was made much more difficult than it would have been had the English double or mixed standard, as existing from the time of William III. till 1778, remained since the latter date unchanged. At the time when, at the end of the great French war, the

currency of England had to be restored by cash payment of banknotes, it appears to have entirely escaped Lord Liverpool, that all his unanswerable reasoning against an inconvertible paper currency was really in favour, not exclusively of a gold legal tender coinage, but of a coinage which should possess intrinsic value ; and the state of things was reverted to, which had obtained between 1778 and 1797, not that natural arrangement which had obtained before 1778 ; at which period the recoinage of guineas gave the opportunity of adopting what was then thought, with little consideration, to be the simplest system. About the year 1852 or thereabouts, when it was foreseen by economists that the large increase of gold supplies would produce a period of higher prices, the proposal was made, in the supposed interests of the stability of commerce, that England should adopt a silver standard, throwing out gold ; which would have been a solemn rejection of the gifts of nature ; but no proposal appears ever to have been made, none at least that found favour, of a recurrence to the mixed standard. For many years the upward general movement of prices went on ; receiving its first check, as nearly as such can be traced, where the generalization of facts cannot be more than approximate, when the German empire engaged in the large operation of displacing the silver money of that extensive country of forty millions of people with gold money ; contemporaneously with which, changes in the action of the mints of France and of the United States, different in form but like in effect, were proceeding. The silver dispensed with in Europe and America flowed of necessity to the East, where it had (and has) still, according to usage and law, its uses ; and the effect of this upon the exchanges between Europe and Asia was one of the suddenest things in the whole history of commerce.

The rupee fell in value in European markets by one-fifth, and so remains. Now, this was the cause of not only commercial inconvenience, but of a direct wrong and injustice to the British Indian treasury, and therefore to the whole Indian community. A large portion of the public debt of India was borrowed in England, and its annnal interest is payable in England in English money; and the loss in consequence of the fall of the exchange, in addition to that on other charges which have to be paid in this country, is as much as three millions sterling a year. Those who are engaged in trade must expect contingent losses, arising from things which they could not foresee, or, if they had foreseen, could not control; but it is wrong that such a dislocation of financial arrangements, which are not commercial but international, should be permitted to occur. It is now coming to be generally acknowledged, what has long been known to sound economists, that the paralysis or stagnant state of trade all over the world, which has now reached to the point indicated by Pharaoh's seven lean kine, is the not very indirect effect of the rise in the value of gold; and such a paralysis of trade is not an evil of the present alone, for it tends to diminish production and the creation of wealth. In all probability, there are complementary evils to be found, were they easy to find, in the opposite state of things which prevailed for a quarter of a century while gold was falling and prices rising; probably an increase of habitual private expenditure over society generally is the principal. It is evident that had England and the other great commercial nations always maintained a double system of legal tender coins, neither the upward movement nor the reaction following would have been so great. About the time when the great fall in the Indian exchange took place, it is believed that the

English government, presided over at that time by Lord Beaconsfield, considered the propriety of establishing a gold currency in India in place of the silver one existing; and there is no doubt that the Austrian government contemplates the replacement of its paper money by specie, in which event the example of Germany in choosing gold and rejecting silver is likely to be followed; Russia may do likewise. Supposing those two countries, Austria and Russia, do so, the Indian operation being so vast that it may be dismissed as impracticable, the amount of gold coin over the world in proportion to the magnitude of its trade will be still further reduced; and a progressive diminution of prices may be expected, which will not reach its finish before the termination of this century. These are serious considerations; they are not of such a nature as to make it justifiable to make changes merely to remedy the evils, actual and in prospect, but they are great enough to call the attention of all men to the searching out the principles which ought to govern our arrangements. A state of things in which prices are constantly advancing owing to this or the like extraneous cause is popular, while some of its benefits are illusory; it is when a state of things supervenes in which society feels a pressure, that its attention can commonly be aroused.

The manner in which the restoration of the double standard in England could be best effected appears to be this: The old proportion of the relative values in weight of gold and silver was as one to fifteen and a half; and the proportion still maintained by the laws under which the transactions of the French and American mints are carried on is nearly the same. The rupee at two shillings, or one-tenth of the pound sterling, comes very near to this proportion. The silver coinage of England is intrinsically, as it comes fresh

into circulation, worth only nine-tenths of the nominal value for which it circulates ; and there is no statutable right, accordingly, to have silver coined at a fixed seignorage rate, as there is with gold. To unite the currency of England with that of India on the basis of making the rupee legal tender here for two shillings, and the sovereign legal tender there for ten rupees, a complete reissue of silver money of increased weight in place of our present silver currency is necessary ; and it would be necessary to make silver bars mintable on application on similar terms as gold is at present mintable. There is no reason why there should not be mints in both states, working reciprocally, although the image and superscription might be different, as the Australian are. Many contracts which have a long time still to run subsisting in this country, for payment at fixed dates, interest on mortgages, interest of the public debt, and such, it would be right that the obligation to pay these in gold coin should remain ; but all future bargains to pay in pounds sterling should be at the option of the debtor dischargeable in gold or silver of our coinage.

The main objection to this change is based on the moral obstacle which its opponents imagine exists to any change in the standard of value, as if any change must be an illegitimate tampering. It is not enough to show, in reply to this, that such changes have been made before, notably in 1778, when silver was displaced from its position ; or that a temporary—too often a permanent—change, by the adoption under the pressure of the cost of a war, of paper promises to pay coin instead of coin itself, is not without example in our own history and in the history of other countries. On moral grounds the objection, if valid, is valid against the application of the change to existing contracts only ; and that it should be valid as concerning them, it

would be necessary to show that the recipient of three pounds per annum interest of government stock is offered anything other than that which he had agreed to accept; for the amalgamation of the currencies of England and India is not in any way a similar transaction to a diminution of the weight of the sovereign, say by half a crown's worth. Its ultimate effects in one direction, that is, in diminishing the purchasing power of the sovereign, which it cannot be denied it is calculated to do, under the various surrounding present and probably future circumstances, may be similar; but that is no moral reason against it, if the state, in making the change, acts within its always recognized prerogatives, which it would do. If a man be put into possession of an estate which had been withheld from him, there are two ways of doing it: by ousting the usurping occupier by force, and by the ordinary course of law; the former of which methods is wrong. It would be wrong likewise to restore to India the annual three millions in which that state is at present unjustly mulcted, by reducing the weight of the English gold money; but not wrong by restoring silver to its ancient place. Once that the fallaciousness of the above objection to the reform of our coinage is acknowledged, there remain no more real objections to it; they are all of the nature of a blind, and what the late Mr. Mill called stupid, conservatism. It has been wittily observed, that the same spirit which made men slow in Harvey's time to admit his great discovery, and, when they did admit it, to do so unwillingly and grudgingly, is never asleep in reference to scientific advancement; and that the same symptoms continually reappear in the opposition to the reception of new truth. First, men deny the facts; next, they admit the facts, but deny the proper inferences; afterwards, they admit both facts and in-

ferences, but contend that they are unimportant; and astly, admit all and adopt all with as much serenity as they do now the laws of Kepler, and speak as if they had always done so. When attention was called not many years ago to the general fall in prices which was proceeding, the fact was denied; it was denied that this fall was owing to the using up in coin for circulation, of gold more rapidly than it was produced. None deny these things now; they only say that no mischief is being done by refusing as we do the gifts of nature in silver; and some absurd people have gone so far as to say that, on the adoption by any community of a double or optional standard, money ceases to perform its functions in that community.

The same principles which regulate sound policy in the matter of the coins which a state shall recognize and authenticate (not provide) for the established use of the society, regulate also sound policy concerning the general paper money circulation; and the misconceptions which are the source of well-meant but mischievous interferences with and regulations of paper circulation are the same as those which are the source of erroneous legislation concerning coin. In a speech of Mr. Gladstone in 1866, in referring to the action which had to be taken in suspending the operation of the provisions of the constitution of the Bank of England, owing to the severe financial strain caused by the stoppage of some banks, he spoke of the issue of paper money being properly a function which the state should take upon itself; but guarded this, by assuming, rather than saying expressly, that that could only be carried out through a banking corporation like the Bank of England. It is to be said in favour of the legal tender paper money of a community being issued by the state, that its security can be thereby made perfect;

and if there were no other means of making its security perfect, that might be an overwhelming reason for the state being the issuer, and naturally, therefore, the exclusive issuer. No state ever invented paper money. The right to issue promissory notes payable on demand is a natural right, controlled only by the reluctance of people to accept them—a right which bankers and others have exercised, till legislation interfered with it, for generations ; and paper money is a commodity, the trade in which ought not to be interfered with any more than other trades, unless for the public advantage. The amount of circulation which is required by any community, if uninterfered with, will fix itself, as the amount of any other commodity will ; if bankers or other issuers put out more promissory notes than commerce requires, the quantity in excess will be returned on their hands ; that is, supposing that the promises to pay are treated by custom and law as real and not colourable promises, the notes being paid and to be paid in specie when demanded. Now, there is absolutely no reason whatever for the state to interfere with this natural right, except for the purpose of taking measures to make the payment in specie on demand certain ; and this seems partially admitted by the framers of our present banking laws, if their intention is to be inferred from the precautions which they took to ensure the undoubted convertibility of the notes. All issuers of notes, according to the Acts of 1844 and 1845, were to continue entitled to maintain their issues at the amounts which they had reached at the time of the passing of the acts, and as much more in amount as they kept gold bullion in hand to provide for the payment of. The Bank of England was authorized to keep out in circulation a certain specified amount, and as much more as it kept bullion for ; and the privilege was

given to it, that its notes should be valid and good payment of debts, and not to be refused in discharge of them ; while the notes of all other banks, private and incorporated, were not good discharge, and were only permitted to circulate. No new persons or corporations were to presume to issue promissory notes payable to bearer. The leading purposes of this legislation plainly are to recognize the prescriptive rights of already established bankers, but to provide at the same time an institution which should ultimately supersede them (in the particular capacity) and furnish the community with a uniform and undoubted circulation. The process of the absorption by the Bank of England of what is termed the private circulation has been very slow ; and owing to the unaccountable prohibition to that bank to trade out of England and Wales, the private note circulation of the other portions of the United Kingdom has actually increased ; while those parts of the empire are at the disadvantage of having no legal tender paper money at all. Like all artificial systems, this ingenious one is full of defects ; and in that matter in which it was supposed to be perfect, has shown itself most imperfect ; for the security of holding coin for notes is no security at all if the coin is not really held ; and there is no inspection by any officer of the state to ascertain this, only a certificate given by the bankers ; moreover, the coin so held is not made a special security for the convertibility of the notes, but is an asset in general of the bank holding it. In his chapter on banks, Adam Smith gives a detailed and laudatory account of the Bank of Amsterdam, which had a note circulation entirely represented by bullion which the corporation of that city from time to time certified on oath to be held in its vaults. The "Wealth of Nations" was written about 1777 ; in 1795, the French armies overran Holland, and expected great

spoil from the plunder of the Bank of Amsterdam. They were disappointed, for there was none there; and it was discovered, on investigation, that for a long period of years the corporators had conspired with deliberate perjury to maintain the standing of their bank; and probably at the time when Adam Smith was composing his book, the bank which he held out as a model to all trading communities was insolvent. Something like this occurred, but on a very small scale, in the case of a bank of issue in Scotland in 1878; and such is possible in any case and at any time; and only made difficult, not made impossible, by inspection; for inspectors may be bribed. The regulations which affect the Bank of England, in permitting a certain "uncovered" issue, do not appear to have been very successful; for three several times, since the passing of the act, its provisions have had to be suspended by extra-legislative authority; and the opinion is fully warranted, that if England were engaged in a trying foreign war, the act of 1844 would become impossible of administration. A theory of navigation which can be applied only in fair weather would not commend itself to sailors.

The United States supply us with a paper currency system which is very nearly perfect, and which is easy of imitation in any country. There need be no prohibition of issue, if no notes are recognized by law except such as comply with certain expedient conditions; for where there are legal tender notes, acceptable at the government offices and other public places, they will soon displace all private notes. The conditions should be, that sufficient government stock should be placed in the hands of a public trust, to be answerable for the conversion of the notes into coin, failing the promiser; in which case the stock should be sold, and

any deficiency (should such arise, which is very unlikely) made good by the state. The notes should be double-numbered, and countersigned by a member of the trust; which would make imitation and forgery difficult in a degree approaching to absoluteness. The stock transferred to the trust should be resumable on the withdrawal of the notes which it should be answerable for from circulation; and the interest or dividends of the stock should remain to the owners, the stock being held by the trust as security only; and no tax should be levied upon the persons or companies issuing the notes, above such charge as would defray the expenses of the management of the office. For if there is any trade which ought to be utterly free, and untrammelled by taxes and restrictions, it is that trade which has relations with all other trades, and without which no trade, under our highly organized commercial condition, can be carried on—that is, banking; and under such a system as the above, the like of which already exists in the United States, issue of promissory notes would be likely to be always a necessary branch of banking. It may be said there would be “over-issues;” which is quite true, as there may be overproduction for a time of any article of manufacture; but it is not the proper business of the state to guard against it. It is no more properly the function of the state to provide the community with paper money than with coin; it is the proper function of commerce; and for the state to be utterly unconnected with the trade of banking would be a political good at all times, and especially at those times of trial which occasionally come like a storm on treasury and bank alike.

The late Mr. Bagehot, in his “Lombard Street,” expresses a doubt if it be possible that any material change should occur in the complicated organization of

English finance and credit. The author of this treatise cannot believe that changes introduced in accordance with sound principle, and in accordance with the example of other commercial communities, would fail in their natural effects. It might be that even if the present monopoly of the Bank of England in circulating promissory notes, and also in the monopoly of the public accounts, were done away, the bank would continue to be the "Bankers' Bank," the only depository of the cash reserve of the whole of English trade. This is a matter with which the state has nothing to do; or, rather, all that the state has to do with the arrangements of bankers and financiers is to leave them to those to whom they belong. But the state has to do with avoiding anything and everything which shall affect by its action the natural course of production and exchange. In common times, the effect of the transactions of the state on commerce may be taken to be *nil*; but in extraordinary times, times of war and tremendous expenditure, that effect may be, and in some cases must be, serious and mischievous. Nearly all great states, in such emergency, when the paper circulation has been a matter of the state's business, have adopted irredeemable or deferred promissory notes. America did so, in the revolution war, and never paid them; also in the civil war of our time, when they were afterwards liquidated in coin. France issued promissory notes even before the outbreak of the continental war of 1792, and never paid them. England, in 1797, forbade the bank to pay coin; and for twenty-five years no man in England knew what was the exact value of what he owed and of what was owed to him. Italy suspended cash payments in 1866, and has only recently resumed them; Austria has not had a metallic currency within the memory of man. What has hap-

pened formerly may be and will be repeated. The restriction on the bank in 1797 was imposed under the most dire necessity ; for without it national and universal bankruptcy were imminent. Trade and production accommodated themselves rapidly to the new state of affairs ; but they were diverted, and continued to be diverted, from their natural channels ; and the trading and manufacturing community were subjected to pressure and hardship, which was the effect, not of the war expenditure, but of its form, and indirect action. At that time those classes of the community were by no means so politically influential as they are now ; and were the like to happen now, their suffering and impatience under it might be such as materially to impair the national resolution. Suppose—and this may be our position within the present century—that we have ever to fight one Russian army on the Indus, and help to baffle another in Roumelia ; with French fleets off Portsmouth and Alexandria ; with Ireland in rebellion, and no help to be had on the side of Germany ; the situation would be something like that of 1797. If, in addition to this, the current rate of bank interest was ten per cent., the provisions of the act of 1844 suspended, the bullion down to five millions and the circulation up to forty millions, our trading and manufacturing interests might be unable to endure it ; and we might be driven to make disadvantageous peace while the Russian armies were surrendering and the French ships sheering off. Whereas, if the government were entirely dissociated from the paper circulation—that is, dissociated from it in everything but enforcing payment of the notes on presentation, as all contracts are enforced, and were entirely dissociated from the Bank of England by keeping its own cash, buying up and discounting exchequer bills according to its wants—a

financial strain of such kind as we have seen need not be the necessary result of a war. This is a most concerning consideration. It is not when the storm comes that the ship should be trimmed; if the sound system of liberty, with responsibility in its proper place and in no other—for at present the responsibility for the payment of banknotes is in the state morally—is ever to be adopted, the proper time is when there are no disturbing influences.

Public
relief of
the poor.

That view of society which appears to have been prevalent in the Plantagenet times was, that the place of every man in the community was to be provided for him, and that the relations of men to one another should be all regulated by law. Trade was in the hands of corporations, which permitted of no intrusion except according to their rules, and enforced their rules both directly by prohibitions, and indirectly by limiting the number of the apprenticeships that they allowed; the Statute of Labourers, and the subsequent vagrant laws, severe and even tremendous, continued under another form the serfdom which was disappearing from the agricultural system; wages were fixed by the authorities of the parish or hundred. The sumptuary laws of the period had their ground in the same political conception. We know now that it is not the business of the state to enforce the performance of every social duty; but what we know scientifically our predecessors had to learn by experience. The theories, if they can properly be so termed, of the Middle Ages, descended to the Tudor times; but time, progress, and the operation of unknown, but not the less irresistible, economic laws,

traversed the theories incessantly. There were under Henry VII., and through a great portion of the sixteenth century, various legislative attempts to hold society together under its old lines, chiefly by limiting the extent of agricultural holdings, and enacting the proportion of each farm that should be kept under plough; and the law of vagrancy, passed in the reign of Henry VIII., was more stringent than any that went before. The advance of society could not be thus restrained; the engrossing of farms, the raising of wool instead of crops, the rise in wages, the rise of prices of corn and cattle, proceeded; and after the accession of Elizabeth, nearly all new sumptuary legislation, and nearly all attempts to enforce the old, ceased. But against the end of the sixteenth century, a new condition of things had arisen, which led to that law of the forty-third of Elizabeth, which is at this time erroneously thought by millions to be an essential part of the British constitution. It is extremely difficult to arrive at anything like a correct apprehension of the condition of the country at the close of that century; and to understand the reasons which actuated the enactors, apparently without much debate, of that momentous law. One surmise, which, if not original with Cobbett, was insisted upon by him more than by any other historian, is, that a state or public provision for the poor was necessitated by the suppression of the monasteries. Seeing that one of the greatest insurrections that ever occurred in England—the rising of the commons of Lincolnshire and the North under the name of the Pilgrimage of Grace, a movement ostensibly religious, but really far more social and industrial than religious—was before and not after the suppression of the monasteries; and seeing that in the risings that took place in the reign of Edward VI. there was no call on the part of the

insurgents for their restoration; and considering the length of time, two whole generations, between Henry VIII. and the first year of the seventeenth century;—the conjecture of Cobbett may be laid aside. The extent of the domains of the ecclesiastical corporations of England had never been nearly so great in proportion as the extent of the same in France and Italy; and although these latter were quite capable of administering the functions of a modern poor-law, and in Italy, at least, did so till a recent period, those of England were not numerous enough to supply a general social want; and their extinction was never made a popular social grievance—indeed, it was rather regarded with approbation. It is to a different set of events that the act of Elizabeth is to be attributed; and that such a measure was thought of at all—for it is to be observed that it is all but unique in European polity—is probably owing to the tradition of the expired or expiring sumptuary and regulating legislation. From the year 1520 or thereabouts, till one hundred and fifty years after, an advance in prices of all things, without exception, was going on all over the world; a far vaster advance than any which has taken place in the present century, owing to the increase of gold supplies from Australia and the Western American continent. It is not too much to estimate the general enhancement of prices at treble; and most of this treble had been reached by the year 1600. The movement was not understood; and the advance reached articles of common consumption before it reached wages. In the present century the advance of prices has been far more evenly general, far less fitful, and far more understood than the similar condition was in the sixteenth century. Whether its being better understood has acted in at all regulating the advance must be uncertain; but that such a movement

should proceed while those most affected were in utter darkness as to the cause must have been, at least, morally aggravating. In the present century, also, the facilities of intercourse, so vastly greater than ever before, have an almost instantaneous result in affecting the price of labour when the price of the necessities of life rises.

[Economists will perceive that there is no discrepancy between this and the observation in page 148, concerning the taxation of labourers not having the effect of raising the commercial value of their labour. It is not the cost of living being increased by a rise of the prices of food and necessities, or by an impost, which gives labourers the power of exacting higher wages, but the facility of bringing their labour to a better market, which may come into existence simultaneously with the advance of prices, but independently of that advance.]

It would appear that during the last ten years of Elizabeth's reign there was, besides the above actuating cause, a considerable increase of mendicancy and vagrancy; it is quite possible that this was influenced by the expenditure of the Spanish war, and a certain social dislocation which accompanied it. At that time England contained about four millions and a half of inhabitants, being divided, as at present, into about ten thousand parishes; this would give about four hundred or four hundred and fifty inhabitants to each parish. Some accounts which we have of that time state the number of households in each parish to be generally about ten; but as this is manifestly incorrect, if household means family, we may interpret it as meaning that a parish of the agricultural sort contained on the average ten farms, the labourers of which either were part of the household of the farm, or else were lodged in separate cottages in its neighbourhood or on its lands. The assize of wages, or settlement of the rate of wages

by the magistrates, had never fallen entirely into disuse ; but with the increasing migration to London and other towns, the increase of which, the capital especially, was a matter which began then to excite general observation, it became impossible to dictate to labourers what wages they should be satisfied with, and the fixing of them became a mere form. It was, so far as it is possible to represent from slender materials what a condition of social affairs three hundred years ago resembled, under circumstances like the above that the forty-third of Elizabeth came into operation. Its provisions were, that the parish overseers should set to work in a reproductive manner all idle and vagrant persons in their parish ; and they were authorized to tax the owners and occupiers of property in the parish for the expenses incurred ; they were further authorized to relieve the sick and helpless ; and, if occasion required, to erect buildings for the purpose of carrying out the industrial objects of their appointment, and the subsidiary benevolent objects which were made part of the business they were to administer. But the primary object of the law was to put down vagrancy by taking away the pretence of it. Not one trace of this object remains now, except what is contained in the habitual use of the first syllable of the word workhouse. For three quarters of a century or thereabouts after the enactment of the first poor law, its administration appears to have been, roughly, that the overseers of each parish compelled every inhabitant in it, who was otherwise unwilling and needed compulsion, to accept employment in the parish ; and the wages that each man was to be paid being established, and the overseers being the chief inhabitants themselves, generally farmers, the poor law in most parishes was a clumsy mode of carrying out a kind of theoretical socialism of a low and

stagnant kind. It did not work very badly ; for those whose liberty was curtailed by it were either the vagrant classes, who were neither estimable nor influential, or the farmers who were compelled to employ them, and who at least got some return for the wages they paid, and were relieved from the weight of supporting mendicants by direct alms or indirect blackmail. The law of settlement which followed the poor law in Charles II. was probably enacted to prevent parish from throwing upon parish weights and troubles which the first parish ought properly to bear, and in this spirit it was administered ; but the traditional idea of a kind of modified serfdom lay below it. It is now difficult to tell when the poor law of Elizabeth began to expand beyond the bounds of the object of its enactors ; but it is quite probable that it did so during that access of wealth and prosperity which England underwent, beginning not long after the Stuart Restoration ; a state of general progress which never ceased, except for a few years under the strain of King William's wars, till exhaustion from tremendous exertions overtook us in the last period of the contest with Bonaparte. Nothing is more easy than for a body of trustees who are practically irresponsible than to run into liberal and apparently beneficent expenditure ; they have the applause, certainly of those whom they bestow largesse upon, and probably of those whose money they spend—for charitableness is always popular ; and giving away money, taking but small heed as to what is done with it, is very easy indeed. A period of rapid advance in general wealth and well-being does not imply of necessity that pauperism and want in the pauper class must diminish ; this is proved not only by the example of England in the eighteenth century, but by the still more remarkable example of the Atlantic cities of the

United States, where chronic pauperism has by this time attained what must be almost acknowledged as the rank of an established institution. There can be little doubt that at least as far back as early in the eighteenth century many inroads had been effected on the original intentions of the act of Elizabeth; and that the habit had been formed of giving what began to be called outdoor relief in a way that the legislators of 1601, unconscious communists as they may have been, never contemplated; for in 1725 an act was passed, not very exact in its terms, authorizing such relief as no legislation would have done unless the relief had actually preceded the legalization of it. From this time our poor law expenditure increased in amount prodigiously; and from about this time began that long series of trials and appeals at law on constructions of the settlement laws, called sessions cases, which for a century employed the talents of many third-rate lawyers and anile judges. During a sharp scarcity, the pressure of which was aggravated by the cost of a tremendous foreign war, in 1795, the last inroad was made on the famous forty-third of Elizabeth, by authorizing a practice which there can be little doubt had already spread by connivance to a considerable extent, that of granting outdoor relief in weekly doles to persons, even heads of families, in receipt of regular wages. At the time when this was done, the old laws, essentially sumptuary in their nature, against forestalling and regrating of corn, were being enforced with unusual vigour—but for the last time in our history; a memorable tract by Burke, written at this time, having had great influence in opening the eye of public opinion to the mischief of the interference of authority with “the most useful of all trades.” The same error dictated both the laws regulating the corn trade, and

the new law of poor relief—the idea that it is possible by regulation of law to mitigate the evils of scarcity. Had the amending act of 1795 been only a temporary measure, much harm might not have been done, for the scarcity was succeeded by plenty ; but it was permanent, and in thousands of parishes it was administered so lavishly, and wages and poor-allowances were so mixed up, that whole communities were pauperized and demoralized. It came to be a practice to make to every family a capitation allowance ; so that a man was paid wages not according to the value of his work, but according to his wants. Some modern communists or socialists desire to remodel society on the basis of giving to every man what the society shall adjudge to be the real worth of his labour ; and think they would be able to make such adjudication better by artificial means, laws, and administration, than by allowing free play to natural and self-acting economic law. These socialists are profound philosophers compared with the fanatics who approved what were called the abuses of the old poor law ; which were abuses, no doubt, but abuses of common sense and common morals, and of all that helps to make a society prosperous and virtuous, and not abuses of the law of 1795, only its natural and necessary outcome. Its effects, in small parishes particularly, were ruinous and horrible. It came in some places to be an acknowledged social maxim, that a woman with a bastard child was a more eligible wife for a labourer than a virgin, because the former was entitled to a weekly parish allowance, the more than price, the public reward, of her prostitution. The workhouses became brothels, gehennas. Men and women, employers and labourers, common people, overseers, magistrates, were all corrupted with a corruption growing in moral volume and in money cost, till in some places, against

the years 1830–1835, the poor rates exceeded in magnitude the rent of the land, and the land was deserted and left untilled and nearly in commonage. Then came utter and final poverty, discontent, insurrection, malicious burnings and other wrecking of property, anarchy hideous and hopeless. These things, or some of the worst of them, have passed away, under the rule, not half severe enough, of the commission, and under the amending laws which followed the disclosure of the above and like enormities. And the poor law administration in England is now nearly reduced to a most inadequate and most inhuman system of relief to those who in vast numbers of individual cases are meritorious and proper objects of charity; but in vast numbers more are confirmed vagrants, preying upon society and rendering nothing in return, quite as systematically, though not as criminally, as the class who support themselves by direct violence and theft. The commission, and the whole administration of the poor law now, do everything that they can to confine relief to those inside the buildings which have been prepared to contain the paupers; that is, the whole present course of management is dictated by the desire to suppress and discourage outdoor relief. In Ireland, outdoor relief was never systematically allowed. The direct result of this system has been, that no doubt many thousand persons are every year kept alive, in a low and useless and utterly degraded condition, who without a poor law would have starved, or been driven to mendicancy; and by gathering these people together into buildings which are half-prisons, a number of moral cesspools has been created over the face of the country, the stench of which from time to time escapes; and supposing it never did escape, but remained prisoned up as in the bags of *Æolus*, the mass of moral putrefaction which

is daily and hourly collecting in our workhouses is enough to poison the life of generations.

Evils and wrongs may be inseparable from all human things; but they are not inseparable only, but incurable and ineradicable, and are worse, they are self-reproducing, when sound economical and jurisprudential principles are set at nought, and when, to establish mechanical and artificial systems, the facts and the foundations of human nature are ignored. Much depends in poor law legislation, as in all other legislation, on the intentions of the enactors of the laws, and the spirit in which they have been made and are administered. In the case of the English poor laws, the intention of the first enactors has been entirely traversed; and the intention of the reformers of 1835, about which time the commission began to be operative, has been hitherto successfully carried out in only one particular. The intention was to put down pauperism; and the pauperism which has been put down is that which may be termed the pervasive pauperism which prevailed when outdoor relief was allowed to be mixed up with wages; this has almost altogether ceased. But with the cessation of that system, and the subsequent modification of the law of settlement, which was made possible by the improvements introduced by the commission, a very large pauper class is being nourished, not entirely new, but new in its great extent. A vagrant law can be enforced only where population is thin; in large towns—and more than half of the English population is now in large towns—the vagrant class can hide themselves; and by the means of the new union workhouses, they can billet themselves to a frightful extent on the public. The old poor law, both as enacted and as corrupted, at the cost of maintaining a system of semi-serfage, to a great extent repressed the public evil

and nuisance of vagrancy; the reformed poor law nourishes it. If too much censure seems to be laid upon the reformed English system, a reference to the Irish poor law, which is the same nearly, but more complete, because there were not any of the ancient mischiefs to remedy, will be evidence that the censure is not too great. In Ireland, there is hardly any outdoor relief ever given; when it is allowed, it is exceptional, the medical relief not being taken into account. In that country there is no settlement law; and in consequence there is a roving population similar to the "tramp" class in England, which systematically quarters itself on one or other of the various workhouses. There are but few large towns in Ireland; and the country workhouses may not be anything worse than receptacles for comfortable vice and vicious idleness; but occasionally revelations are made of what goes on in those of Dublin and Belfast, too bad for the particulars to be printed in newspapers. Mendicancy has nearly ceased out of that country; but this is certainly far more owing to the diminution of the population by one-third during the last forty years, than by the operation of the poor law, which has been in existence about that time. One important lesson is to be learned from the experience of the Irish poor law almost at its very outset—the impossibility of a poor law contending with a scarcity or famine. All observers of the terrible time through which that country passed in 1846–1849 report that the amount of relief given and good done by the authorities was as nothing compared with what was done by private persons, both residents and strangers; the workhouses, which had to be extended beyond all expectation, became nests of pestilence. It is not surprising that a system which is unsound both economically and morally should be productive of

physical as well as of moral mischief ; and there may be added to the above evils which have been enumerated, another, a very great, and, if not wanton, extremely careless, waste of human food. It is to be observed that the Irish famine was a real one—the utter destruction of the usual crop of food of four or five millions of people. In Indian famines the food exists somewhere, perhaps not very far off, and what is required is the machinery to bring it to those who want it ; but in Ireland, in the early part of the year 1847, the food did not exist anywhere but abroad ; and every attempt to bring it to those who wanted it by other than the ordinary course of trade defeated its own object ; in particular, one speculation in the import of American maize, made at the instance, strange to say, of Sir Robert Peel. When the government of Sir Robert Peel resolved to propose the abolition of the corn laws, early in 1846, anticipating that there might be a scarcity of food, they bought for resale in this country £100,000 worth of Indian corn in American ports. The effect of this was to prevent many merchants who would otherwise have entered on that trade from doing so—at least till they were sure that the state would not continue to be their competitor. The food was brought in the most objectionable way ; and when brought, it was generally completely spoiled by bad cookery. In whatever direction we look, in the history of that time, we find warnings against the state undertaking what is not properly one of its functions, any more than the supply of labour ; food and labour being both anterior in existence to the state. People said that the time, and the case that arose in the time, were exceptional—which was quite true. A storm is exceptional, but it is in a storm that the rules of navigation may be broken with least impunity ; a fever is an exceptional state of a man's

health, but that is the occasion when his physicians must use, not reject, all their science.

Any public provision for the relief of the poor, on the lines of the various poor laws of the United Kingdom, and, probably, any system of such general public relief which the wit of man could contrive, is opposed to the natural working of the law of natural selection. Any such system, so far as experience goes, and so far as at present our estimate of it can go, says to the idle, the vicious, and the improvident, "You shall suffer as little as possible through your indolence, your vice, and your improvidence." A parent may say this to his son, or may act towards his vicious son as if he had promised him so; and none will blame him, unless he carries his indulgence to absolute folly. But a parent can mix his indulgence with advice, and may even make it the vehicle for enforcing amendment; and he does all at his own cost. The state cannot be a parent; all attempts to be so, or to imitate the functions of a parent, must be unsuccessful. Punishment is inflicted by a parent, if inflicted from right motive, to reform; by the state to terrify others, the reformation of the criminal being a secondary and incidental object. The Right Hon. Mr. Fawcett has well and ably expounded the fundamental errors and vices—defects they may be called, but they are more—of our poor law system from the economical point of view, and partially from the moral point of view. In every matter of this description, the political, economic, and moral aspects of the subject are so closely placed, and so cross one another, that it is impossible to fix their borders with exactness; nor is it necessary, for often sound economics and sound morals are the same. There is one set of considerations which Mr. Fawcett has not approached; he has not spoken of the effect on public opinion and the effect on private

action of the existence of a public system of relief. In one of his chapters on moral social duties, Archdeacon Paley speaks of the man who declines to give anything in alms because he pays poor rates; to which the moralist replies, that he might as well decline because he pays his debts, for that there is no virtue or merit in paying what the law obliges him to pay. Supposing that the relief of the poor is effected in so perfect a manner and to so complete an extent that there is no room left remaining for the proper exercise of almsgiving, the man contemplated by the archdeacon, who is by no means a creature of the imagination, would be in the right, and the reply would be inapplicable. The reply admits that the system of relief is not only imperfect, but that it is notoriously so inadequate and imperfect, that the duty of almsgiving remains a duty just as much as if there was no poor law. Now, almsgiving may be a duty or not, but there can be no doubt that the common conscience of mankind applauds and holds in high honour the practice of liberality when regulated by discretion; and it must be a moral mischief of no small degree, when that which Christian and pagan moralists alike regard as a high virtue should be practically extinguished in the greater part of the community under a pretence that the exercise of it is useless, and that the necessity for it is done away with; the community, or most of its members at least, knowing all the time that this pretence is false. Private almsgiving, discreetly practised, is not demoralizing to the recipients; seeing that there is no public advertisement to the whole population, as there is where a poor law exists, or monasteries on the old style and scale of hundreds of them recently in Italy, and some in England in the Middle Ages, prevail, that improvidence and a vagabond life are as likely as a sober and productive

one to end in a comfortable old age. Private almsgiving is capable of being exercised with discrimination ; public almsgiving is not. Classification of paupers is made, certainly, and can be carried to any length, but it is classification of outward things concerning the paupers, their age, their religion, and so forth ; it is merely mechanical, and no matter how exact, moral deductions from its generalizations will in all probability be erroneous. There is nothing of necessity degrading to a poor man in receiving a gift from a rich man ; his relations to his fellows are not changed by his receiving it ; but if he receives a gift from the state, his relations to his fellows are at once changed, and changed so unmistakeably that his changed position is recognized by opinion and by law, and he becomes an inferior being. It is not so concerning the reception of private charity ; what is degrading in mendicancy is really not the poverty, but the vagabondism which belongs to it ; for let any one recollect what he has seen, and what may be seen in thousands of privately established and privately conducted almshouses, and the difference between the recipients of relief there and of those who come on their parish is at once evident. The reason of this superiority is, that by the nature of the case private charity is susceptible of being administered well ; and public only by chance, if even then. It makes no slight difference, besides, in the relations between the immediate donor and the receiver, that public doles must be given by paid servants, while private charities, no matter on how vast a scale, can be administered, and are always governed, by volunteers. It is no inconsiderable loss to this country, advancing as it is in population, and in the means for the relief of the distress which exists, and always will exist in it, that the foundation of hospitals for decayed persons is almost at a stand. In

the last century, and in that before it, it was a far commoner practice than it is now for persons of substance to bequeath sums of money to the poor of their parish ; and those times witnessed the foundation, both by living persons and by the legacies of the dying, of great numbers of almshouses, hospitals, and other institutions of like intent. The present taste of rich and liberal persons, who from public spirit wish to benefit their neighbours, is towards parks, libraries, museums, and such ; things which, if the public wants, it can afford, and could conduct quite as well as private persons. It is not one of the least evils of our system of public poor relief, that it diverts private liberality, to an extent which we can only guess, but which must be very great, from one of its most legitimate and most useful channels.

There is another very practical mischief indirectly wrought by the poor laws, chiefly in those agricultural parts of England which the whole of England resembled when the poor law was first instituted. The working of the law of settlement makes it the interest, in order to avoid heavy poor rates, of both owners and occupiers of agricultural land, to discourage the residence of any person in their parishes who may be expected to become a recipient of relief ; and this extends even to their own labourers, whom they endeavour to drive, if they can, into remote villages. This great and long-existing social mischief is now attracting more attention than formerly ; and people are beginning to see that civilization is not likely to spread among a class who have no good houses to live in, and who are overcrowded in the houses which they do live in. Finally, the acquired, unearned, and unnatural right of men and families to live at the public cost, and without working for their own support, is essentially and unavoidably demoralizing. So long as one hundred and

seventy years ago, long before the system had attained to its later magnitude, Bishop Burnet, a wise politician if not a great statesman, said in the last chapter of his history a few words, expressing this objection to the system in its root and branches; and also some of the economical objections which have been so ably enlarged on in our time by Mr. Fawcett.

No organized and completed system, no matter how unsound may be its foundation, can be overturned, or, what practically amounts to the same, suddenly reshaped and reformed, without mischief; for even the diseased members of a body, or the decayed branches of a tree, may not be removed with impunity without care, and according to ascertained rule. The manner in which the commission acted which reformed the English poor laws during the years since 1834 is entitled to all commendation; the errors into which it strayed were properly not its own, but were the product of the fundamental vices of the system. It is not possible to prescribe exactly what further reforms are required, in order to purge all evil from out of it; there are parts which ought to remain, certainly for the present time. The hospitals for the worn-out and infirm, for those smitten with acute disease, and (probably) for the bringing up of deserted children, which are maintained at the public charge, do not in their administration interfere with the proper social liberty and progress. (The author of this treatise desires to express a doubt on the subject of anything of the nature of the Foundling Hospitals, which all over Europe are generally believed to be by their existence an encouragement to vice; at least, if they do not encourage vice, they afford facilities to unnatural parents for a criminal neglect of duty.) The main parts of the poor law administration—the granting of relief in money doles; the support of

a large portion of that class which is the connecting link between the mendicants and the criminals, vulgarly called tramps, at the public cost; the whole of the "casual" department;—all this ought to be suppressed, and that not gradually, but at a blow. Some distress of a real nature, and of honest persons, is relieved; on the whole, the English poor law does twenty times more harm than it does, or can do, good.

The care of the public health and cleanliness is an important portion of the duties of the state; and is likely, with advancing civilization, to become a more extensive branch of its administration than it has hitherto been. It is a man's duty to himself and to his family to keep his house and his surroundings clean and healthy; and when men live in cities, it becomes naturally the duty of the community to attend to its own sanitary condition. It is evident that great part of the legislation which is required on sanitary affairs must be of the regulating kind; some of it must be penal. It is also evident that all the administrative part of the sanitary regulations must be carried out locally; that is, or ought to be, by local authorities appointed by the societies which have interests in their acts. There are no corporations in England which have, by their original constitutions, powers large enough to administer the sanitary affairs of their several jurisdictions properly. By a kind of theory, the vestry of the parish is the authority to cause the removal of obstructions to the public health; but during the last century, the growth of population has been such, that in thousands of parishes there are to be found great cities, the business

Regulations concerning the public health.

of which is quite incapable of being conducted by the vestries, which may have been adequate to their functions when population was small and its requirements few. In old times, the usual manner of proceeding when a public nuisance was complained of, was by a judicial proceeding. If a man erected a noisome manufacture—a bone-crushing mill, for instance—in an inhabited district, any person aggrieved, or the vestry, was at liberty to proceed against him ; but if he erected one away from a town, and the town enlarged itself up to his borders, he had a prescription in his mill, and there was no way of abolishing the nuisance but by buying him out. Local bodies have now powers under legislative acts of buying out by compulsion in such cases ; but their powers are not large enough to apply to every case that they ought to apply to ; and they have not power to deal with any but what may be termed enumerated nuisances, besides those which are such at common law. The backwardness of Parliament in conferring sufficient powers on corporations in respect of these matters is a deep reproach to our civilization. It was only eight years ago that a step was taken towards the abolition of one, perhaps the largest and worst class of hindrances to public health. The case of the bone-mill mentioned is easy to be understood. The owner of the mill in the country which has been overtaken by the growth of the town is evidently not the cause of the nuisance ; circumstances not of his making have created it ; and, therefore, he is not a proper object of a penal law, nor the proper person to be a loser by the abatement of the evil. The owner, on the other hand, of a house or premises which, by his neglect, or by decay, have become prejudicial to the general health ; the premises, be it supposed, a yard where offal is discharged, or the house unfit for the

habitation of men, women, and children ; or even, which is not uncommon, the house originally unfit for occupation by the want of those provisions for cleanliness, decency, and morals which are essential in towns ; that owner is the cause of the nuisance. The act of 1875 gave power to vestries and other corporations to condemn such, and to order, under penalties, that they shall cease to be occupied ; but it made one great and perverse mistake, for it required that those owners who are the cause of these nuisances shall be compensated according to the market value of the premises. It is held that this "market value" is to be estimated according to what the houses produce when inhabited ; and the habit being in England, in all cases of compulsory purchase of property for the public, or for the purpose of making railroads or docks, to award the very highest market price and something more besides, it has arisen that the expense of these necessary abatements prevents them from being undertaken to anything like the extent that is everywhere most pressingly required. These owners are entitled to nothing at all ; they ought to be ordered to shut up their sties, or to employ them for such purposes, if they employ them at all, in a way that will not do the public health damage—as rag-stores, or the like. If the premises, or the land that they stand on, is required for public purposes—the piercing of new thoroughfares, for instance—let it be bought, and paid for according to the value of the premises as rag-stores, or of the land in its bare state. It is not necessary that the land should be bought in every case ; it is not, in fact, desirable ; for it is better that property should belong to private persons than to corporations.

Some questions are arising out of the above, not collateral to it, which may produce changes of some magnitude in our municipal institutions. There can be

no doubt that the clearing away under such a system and such powers as have been indicated, of large masses of old worn-out buildings, in London and other places, is likely to lead to large municipal expenditure; for the opportunities which will occur for great architectural improvements will be too apparent to be neglected. The greater part of our local taxation has always been levied upon the occupiers, and not the owners at all, unless they happen to be occupiers, of property within the several jurisdictions. There are complaints of the unfairness of this; and it is said that when great improvements of streets are made, that the occupiers pay for all and derive only part of the profit; that often there is a loss, all of which they suffer, while the increased value imparted to the permanent property, the land in the neighbourhood of the renovated streets, is a profit to the owners of it which they have not equitably earned. This statement does not exhaust the matter. It does not follow, that the owners of property ought to be made to contribute to everything which enhances its value, by any analogy. The construction of every new dock in Liverpool increases, or at least tends to increase, the selling and letting value of every acre of land in Lancashire; but no one proposes to tax Lancashire directly to make docks on the Mersey; indeed, Lancashire is apt to complain that the dock dues of Liverpool are an indirect impost on its industry. In respect of such land as is let in perpetuity, and houses and shops built upon it, it is evident that there would be no justice in taxing its owners for purposes of local improvement, or for general local purposes. Those proprietors have no interest, for their property cannot become either less or greater; they are really in a position like that of mortgagees; and if mortgagees were thus taxed, they would at once call in their

principal, and relend it upon terms which would throw the tax on their borrowers. Besides this, such taxation might be, and very likely would be, prejudicial to the interests of the community ; it would entitle the persons taxed, in all equitable practice, to a voice in the levying of the taxes and in the disposal of the proceeds ; and they would have no interest except one, that is, to keep taxation as low as possible. It would introduce a stagnant element, a perpetual drag, into our municipalities universally, than which nothing can be imagined more entirely mischievous. This is also to be observed, that in nearly all recent instances great civic improvements have proved remunerative ; and it is impossible that the demolition of the infamous rookeries with which our great towns are infested, and by which they are disgraced, if it should be done without paying what never should be paid, could cost much. The case of the incidence of local taxation is altogether one upon which precedent and prescription are the safest guides.

There are at present sundry projects floating about, for conferring upon corporations powers not only to demolish houses which are unfit for human use, but also to build houses which are fit. It is enough to say concerning such projects that, if undertaken, the least mischief that they can do will be to prevent more good than they could in any case effect. It is no proper thing for the society to undertake any trade, or any manufacture, except for those things which it consumes itself, like guns and war-ships. For the state to undertake the housing of its members, or any of them except for convenience its immediate servants, would cause a huge development of a mischievous machinery resembling our poor-law system. While such projects are to be deprecated on every economical principle, it is equally evident that everything in our laws and in our legal

systems which interferes with the trade of the building of houses, as with all other trades, ought to be removed. There is a practice with landowners in London of granting what are called building leases; a term which has two meanings. One sort of building lease is when the lessee contracts to expend such or such a sum in building upon the land he has taken; the other sort, that here referred to, is a lease granted for such a term as will enable the lessee to build, and repay himself with the profits of his building, against such time as his lease shall expire. A usual term for these leases is ninety years. The effect of this arrangement is, that the builder erects houses which he calculates to last only as long as the ninety years, at the end of which term they will be fit only to pull down; and it often happens that they are fit for that some time before the term expires. The calculation of the landlord is, that at the end of the term the value of land will have increased, and so, when he or his successor shall have received back the land with its ruinous buildings, he will be able to obtain a larger rent for it on reletting. It is plain that such a system is the occasion of public mischief; for few things are more mischievous to a civic community than the existence in numbers of tumble-down dwellings, the centres of disease and dirt, and the refuges often of disorderly persons and thieves. It would be perfectly justifiable to assume to the public use, for destruction and rebuilding, paying their value in the usual way when property is so taken, all such houses with the land they occupy. A better remedy, however, can be applied. It is possible to purchase, not such property, but the reversions of it only; and it is better to allow the property to remain in private possession. The lessor of land for ninety years, or for as short a time as sixty years, has no interest in the reversion which he can ever personally enjoy; it would,

therefore, be no injustice to him if the lessee were enabled to purchase compulsorily the reversion, paying a premium of one-fourth or one-fifth part above its ascertained actuarial value as compensation for the compulsion exercised; thus practically enabling every lessee who has a lease with sixty years or upwards to run to convert it into a perpetuity. There is a precedent for this in Irish legislation. It was a very common form of lease at one time in that country to make a letting for lives (which kind of letting established a freehold right by construction of law), with a covenant for perpetual renewal on the fall of each life by the insertion of another in an endorsement on the lease. By an act of Parliament passed about 1848, the lessee in such case was empowered to convert his lease on lives into a perpetuity, by going through certain forms of registration proper to prevent fraud. In order to prevent any injustice, or semblance of it, to the landlord, it might be expedient, were a similar power of conversion established in leaseholders in general, to give the landlord an alternative power of purchasing the tenant's interest, and so extinguishing the lease—paying, of course, ample damages; the object being the same, the annihilation of a class of contracts which are found by experience to be contrary to public policy.

The law of England concerning gifts is: If a man gives to another any chattel—a sum of money, a jewel, a book, a horse, anything; using at the same time words which convey that a gift, not a loan or deposit, is his intent; at the moment when in pursuance of such the possession of the chattel passes, it becomes

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the property of the donee, as entirely as if it had always belonged to him. The law concerning a gift of real property is like, certain formalities being necessary in order to make the gift absolute and irrevocable ; and even if all the formalities necessary to make it irrevocable are not gone through, yet if the documentary evidence of the gift is complete, and the donor dies without revoking, the gift is good, and can be undone by the donor's heirs only on very perfect proof of fraud. This law is just. Now, all that man enjoys—the objects of nature, his limbs, his strength, his five senses, his life, and his understanding and reason—are all gifts from God ; and the result or product of those gifts, that is those things which man makes from them, inasmuch as the ability so to make them comes from the Author of the original things, all that man possesses, in short, is God's gift. This is the root and ground of the idea which all men in a state of nature anterior to the existence of society, and all men in a state of civilization since the commencement of society, except those corrupted by sophistry or vice, agree in, consciously or unconsciously to themselves, of the sacredness of the nature of property. Property is the creation of nature, simple or compound, appropriated by man. It is existent in a state of nature ; it is antecedent to society ; and the rights which the owners of it have are rights to maintain which is one of the main purposes of society ; although society, it is very conceivable, would have, without the existence of such a thing as property after the human and economical idea of it, sufficient elements out of which to form itself. All nations, all mankind are united in agreeing that one of the principal duties, if not the principal duty, of the state, is the protection of life and property ; and this is no less admitted by the supporters of the theory that property is the creature

of law, than by those who believe that the necessary antecedence of property to law obtains both theoretically and practically after society has commenced its course of self-organization. The former are not inconsistent in this; for supposing it true that property is the creature of society, society has imposed on itself the duty of defending its own offspring; but the practical agreement of the two sociological schools, as to the proper business of the state, does not detract from the importance of the definition; although the manner applied of administering the trust will vary, and has often varied, according as the one or the other fundamental idea has prevailed among public men and in the community. The opinion that property is the creation of law is tenable in only one way: if the doctrine that all natural rights are merged in social rights—that is, that all natural rights determine on the institution of society, and that such rights as are expedient and seem to be fundamental take out a new title from society as the author of all rights—be correct, even in the only form in which such a doctrine can be correct, that is, as a legal fiction under which it may be held that a speculative or actual truth resides, then the opinion may be tenable. Such a cosmogony of society and social rights supposes an origin of society of which the persons forming it are conscious; for a surrender of rights, no matter how unreal it may be, supposes that the party surrendering knows what he is doing; else, if he is acting blindly, he is either entering on an agreement which is not, according to all moral rules, binding at all, or is trepanned into an agreement to which he is held and bound by force; all which is nothing but part of the (now exploded, as is to be hoped) fallacy of the social contract under a new name.

At the risk of being guilty of repetition, the author

of this treatise is obliged to refer to some previously made remarks. The right of property, supposing it to be posterior to the commencement of society, can by no possibility be posterior to the existence of a law of property; for the commandment, "Thou shalt not steal," has no meaning unless property exists already in things which are susceptible of being stolen. Neither has "Thou shalt not covet;" a command probably directed against the practice of extortion; although it has, according to one of the commentators in the Christian Scriptures, a spiritual meaning, addressed to a habit of mind, and not to overt acts. The ordinary language of jurisconsults, were there nothing else in point, ought to furnish a complete refutation of the moral error spoken of concerning the institution of property. The distinction which is universally made and admitted between *mala prohibita* and *mala in se* is of the nature of a definition; and the distinction implies that those things which society forbids are of two kinds: those which are forbidden by that authority from which society derives its own, and those which are forbidden for expedient reasons by its own authority only. There are practical, or rather historical or experimental, arguments of high value against the above idea of property and all other such artificial doctrines; they are favourite doctrines of tyrants and revolutionists. The first attempt that was made under the first Stuart king of England to establish unlimited monarchy was in the matter of customs duties; the whole contest between that king and the next on one part, and the Parliament on the other, down to the meeting of the Parliament of 1640, turned as on a pivot upon rights of taxing, which are rights of property. The separation of the colonies from England was caused by disputes concerning property, the Parliament and the majority

of the people and public men of England making claims as nearly parallel to the Stuart claims as it is possible to conceive; and, curiously enough, in the same order—regulating trade first, and taxing directly afterwards. The whole defence of King James's and King Charles's judges, and the whole case of Great Britain against America, rested on assumed inherent rights, in the first case of the crown as head of the state, and in the other case of the state itself, over the estate of the subject. The National Assembly of France in 1789 abolished many rights of property without compensation, because they were contrary, as they thought, to the rights of man; this was an assumption, tacit but real, that property is the creation of society, and exists for its benefit, and may be destroyed for its advantage. There are never wanting specious reasons for attacks on the owners of property. It is rare that unblushing robbery is practised by the state; when it is, it is the sure mark of a state corrupted by maxims of tyranny, royal, oligarchic, or democratical, as may be.

It is not a proof, or even a reason, against the doctrine of the sacredness of property that the state has not always performed its duties towards the possessors of property, or that it often fails in their proper and due protection, any more than that men have been unjustly put to death, or that the police which ought to defend men's lives and limbs are incompetent and inadequate, are reasons against the doctrine of the sacredness of human life. Society in general, being human, is imperfect; and sundry societies in particular are imperfect, and fail in the discharge of their duties, more or less. But they exist for all that. The government of Rome under Alexander VI. was one of the worst governments of which we have any account, at any time; but even when murders in the streets were

so frequent that when the brother of the Duke of Valentino's body was found, and the citizen who said he had witnessed the crime, reproached with his silence, said the like was so common that he was not careful to report it—even then, society and government remained, mutilated, but capable of revival. In the middle of the last century, in England, no man took a journey from London to York without expecting to meet a highway robber; but society existed, weak at this point, but otherwise vigorous. There are two instances only in the history of modern Europe in which civil society approached dissolution: in Spain, in the seventeenth century, when all domestic and other ties seemed almost severed under the universal dread of the Inquisition; and in France, under the Convention. Yet Spain revived marvellously, even under the trials of the succession war; and France reformed itself with great rapidity before and during the reign of Bonaparte. The argument against sound ideas of the right of property, derived from the delinquencies of society of all stages and forms, and in all periods, in the treatment of it, is specious and popular; but it is no more a valid argument than the sins of society, when justice fails, are an argument against a religious regard for human life. The argument as concerning property is even self-contradictory; rulers and states, royal and republican, have outraged possessors of property and robbed them of their estates, therefore the right of property must be a right of a low order; whereas the very condemnation which is always expressed when those actions have to be characterized, is an admission that the state has in the instances violated rights which are higher than the right of the state in dealing with them.

The greater part of the dealings of men with one another is concerning property—the greater part of the

active life, while awake, of the majority of men is spent in acquiring property; either to consume at once, as food and covering, or to hoard, or to expend to create more property; the greater part of the disputes which men have with one another, and the more so as civilization advances, are about property; and the greater number of the statutes of every society lay down rules concerning it. Even the department of jurisprudence which treats of personal wrongs runs into questions of property; for many personal wrongs are by our law, and by the laws of other nations, compoundable for money compensation or damages; our Anglo-Saxon ancestors had even a price for murder; and the Lombards had some provisions of the same character. Now, there is a principle which all nations, or so nearly all that we may dismiss without notice the exceptions, acknowledge concerning ownership; a principle that may be expressed under one word—prescription. Prescription is a form of custom; and custom is a recognition by society of the rightfulness of that to which the custom applies, which recognition is analogous to a gift. The most usual practical application of the principle is, that a man is not required to prove his rightful ownership of goods of which he is in possession, but the fact or prescription is proof itself. This may appear to militate against the former idea of property being sacred, and therefore that a man to have a sacred right to a thing must have become owner of it righteously; but the physical impossibility in most cases, and the moral impossibility in other cases, of establishing what is the origin of the property, and the necessary habit, or custom, from the nature of circumstances, of taking the fact as what is not to be gone behind but for reason, are the practical carrying out, and not the contradiction, of the righteousness of the right of property. This idea

is more especially applicable to movable goods ; but it is applicable in different ways to immovables ; and it is applicable also to a third class of objects of property, more important as civilization advances, intangible after a certain manner, and having some points of resemblance to chattels, and some other points of resemblance to real or landed property. The three kinds of property are goods, lands, and contracts.

The science of politics, or the science of the commonwealth, is, or ought to be, a practical and experimental science ; and in the investigation of the truths belonging to it, it should not be necessary to have to recur too frequently to the first principles of the science. It ought not to be necessary, in a treatise like the present, in order to point out the principles (of a secondary kind) which rightly apply to the social arrangements and the positive enactments respecting property in its various kinds, to recur almost constantly to the ground upon which property exists, or to enter upon the subject, which must be obscure, of the origin of property at all. In ordinary times the contests and disputes, even the most speculative, which proceed between men, concerning the affairs of the commonwealth, are all conducted on certain assumptions which none doubt, which are accepted as facts, or equal to facts, of experience, or as deductions from axioms and postulates which are self-evident, the deductions having the same degree of absoluteness as the postulates themselves. At this time, and during perhaps forty years back, there is a sect of so-called social philosophers, who dispute, or pretend to do so, the propriety of such a thing as property at all. It is said that as men advance into their eighth or ninth decade, they dwell in their memories upon what happened in their first ; and this is called second childhood. Is it possible that the

world, or the society of the human race, is growing so old that it must inquire, in order to satisfy itself on the rectitude and sound morality of matters which during long periods and generations have been as matters of its instinct, into the origin and incipient stages of the growth of those concerns? It has been preached loudly and confidently within the last forty years that property is robbery; it is being held forth now—a far more dangerous notion, inasmuch as the majority of men have some property, but only a few have any special kind of it—that the land of a country belongs to the community, and that individual ownership of land is robbery; it is maintained broadly by many that contracts entered into centuries ago, the terms of which and their effects descend to the present time, are not binding on persons now living, although they may inherit the advantages of those contracts; and the whole social frame is being disturbed by claims and assumptions of such-like kind—claims and assumptions based upon a setting aside of what did exist and must have existed at the earlier if not the very earliest of the stages of the progress of civil society.

Concerning goods there can be little dispute. If men have no right to the fruits of their labour; if they have no right to the products of nature which they find hanging on the trees, and which it does not require a divine revelation more than the fact of sight to tell them are theirs; if customary use and the acknowledgment of their neighbours do not make a property in such; there can be no property at all; and if no property on the part of the individual man who at least exercises occupation, much less on the part of the society or the sum of the human atoms around, whose occupancy is and must be fitful, and, unless according to rule, destructive, while the occupancy of the individual is

practically preservative. The existence of property in goods, the product of a man's labour—goods which he has discovered and appropriated, goods which other men have given him in exchange for what he has given them—may be held morally to rest on a recognition of the common good being advanced by such property existing; and may rest still more firmly on the acknowledgment by the conscience and habit of all men, both as units and as members of the society, of such property. But that it so rests, in its origin, is an assumption contrary to fact. Therefore the socialist schools of philosophers, when they dispute property, dispute it generally not so much in itself as in the circumstances of its distribution; asserting that hitherto, in the history of the human race, the amount of violence and fraud, combined into various modes of extortion, has been so great and so general, that good title and right to the chief bulk of it does not subsist; and that the society has a right to redistribute it. The shifting of ground from the position that all property is robbery, to the position, that most property as now held is held on vicious titles, is to occupy a much stronger point for the batteries of attack; it is much more likely to command the support of opinion, for it attacks custom only. But as custom is the foundation of all solid law, and as custom is what the society during all its existence both historical and by sure inference immemorial, has admitted; to set it aside in the interests, as supposed, of the society to the hurt of individuals, is that very robbery which the socialist schools denounce. The recognition of title is of the nature of a gift, and it is at the root of all justice that a gift is not revocable. Let it be granted that much property has come into the hands of its possessors, or their predecessors, by wrong; the recognition of this, the prescription, by the society

has made it *particeps criminis*; and no moral right can exist on the part of one partner to seize on the other's share because they were both concerned in a robbery; even thieves think that the worst form of deception and villany, when the man with the horse and cart drives off with the plunder. The codes of all nations, which must be accepted, when they agree, as having the reason of their provisions in universal principles on which human nature itself is at one, acknowledge possession of a chattel as good title unless a better title can be shown; and forms of procedure in disputes generally assume to decide rather to whom a piece of goods does belong, than to whom it ought to belong; for if the decision were to be, to whom the piece of goods ought to belong, the door is opened for a compromise in which less than justice is likely to be done. A man who sells a horse at a fair or market is not called to prove that he has not stolen the horse; but, if he has stolen the horse, and the buyer has acted in good faith and without collusion, and if the circumstances of the bargain are such as shall bring home to him nothing which should vitiate it, then the right of the buyer in the horse is good as against the man from whom it was stolen. And nine hundred and ninety-nine thousandths of the goods in any civilized, or even half-civilized, community are held on as good a title as this. The principle of the statute of limitations, being based on the necessity of circumstances, whether applied merely to the matter of time, or more largely to the matters of facts and transactions, is essential to the security of owners; but it is not based on utility alone—it is based on usage, custom, and justice. The socialist theory is opposed to the principle of limitations; this alone is enough to characterize it as an artificial theory.

The greater portion of the chattels in existence have

been produced by a union of the labour of the owners with the labour of others to whom the owners, or those from whom the owners have obtained the chattels, have given other goods or other labour in exchange for their labour; for it is not to be forgotten that the cost of all things is derived from the labour (the constituent of value) which has been required to produce the things, added to the value acquired from the industrial transactions of men by the objects of nature used in producing the things.

[This is an economical definition of great importance. It has been held that value is composed of various elements, or that the value of a thing is the sum of the value of the natural objects which go to the making of it, the value of the labour expended in the manufacturing of it, the rent of land and premises used, and the interest of money used, in the process. These last two items are evidently only labour in another form; and the doctrine really is that value has two constituents, labour and natural value, or that there is an economical value in the objects of nature inherent, irrespective of their consumption or appropriation by man. It is observed, to support this view, that the finder of a great nugget of gold becomes rich without any labour. The author of this treatise believes that there is no inherent economical value in the objects of nature, and that their value is acquired. Suppose the finder of the nugget cannot bring it to a mint to be coined, it has no value to him; it is entirely owing to the industrial operations of men that anything has a money value of the kind which is measured in the mode of the markets by relative demand and supply. This distinction may be esteemed to be merely metaphysical, but it is politically practical, as will be found on investigating some problems arising out of the ownership of land. The fee-simple of the surface of our globe had no money value at all in the time of Adam and Eve; an acre of land not five miles from London Bridge is now a handsome fortune, its increased money worth being the creation of the vast and concentrated amount of labour and the products of labour around it.]

Nearly all the goods, the articles of use and commerce in existence, being the joint production of those who conduct their manufacture and those employed by them in their manufacture, one of the socialist positions is that if the wages, or amount of payment, whether in money or kind, paid in these manufactures, has not been adequate, the right of their possessor is vitiated by his extortion. This introduces us to the subject of contracts, which are the subject of conventions and laws, as much as goods themselves, and are all either property or of the nature of property; they are chiefly of two kinds—those relating to wages, and those relating to purchases and sales. One jurisprudential principle is applicable to all contracts, viz. the presumption of law is in favour of their enforcement. There is also a rule in English law, and in some form in most other systems of law, that contracts after settlement are not to be gone back upon. If a man has paid money in his own wrong—for instance, has accepted a new house as complete from the builder, and paid the money agreed, and finds later that the windows are glazed with material inferior to what had been promised—the law gives him no remedy. This is in accordance with the principle of limitations, and the application is to ordinary cases where there is no proved fraud; but if the person employing the builder had perceived the glass in the windows before he took over the house, then he could have compelled performance of the agreement by standing on a refusal to pay the amount of the contract. It is evident that those exceptional cases in which performance of contracts is not and ought not to be compellable are capable of being reduced to rule. A contract which is contrary to good morals is not enforceable; nor is one which is contrary to public policy; nor is one in which a man divests himself of

certain rights which are held to be inalienable, as the right of seeking the crown or the Houses of Parliament by petition; nor is a contract held by our courts of law to be binding, if its terms are on the face of them inequitable; but contracts of this nature, as well as those which are against public policy, are not capable, like those which are immoral, of being catalogued, and must be decided on upon merits as the cases arise. A contract of life or perpetual service would not be enforced; an agreement to pay exorbitant interest for money lent would be at least narrowly scrutinized; and, generally, a contract of an unusual nature is likely to be either set aside, on the ground of its inequitable-ness, or virtually set aside or damnified by more exact and certain evidence being required of its terms, than would be looked for were the contract of a common kind; in this following out the principle of regarding custom as substantially unwritten law. There is in Holland a legal provision, that any agreement of a one-sided nature, such as the donation of a property without consideration, or for notoriously insufficient consideration, must be witnessed in a writing not merely signed by the contractor, but written out *in extenso* by his own hand. This appears an excellent rule, as it is as complete a provision as can be imagined against a man executing with his signature a document the scope of which he does not understand; but if such a rule were to be absolute, that is, that a document so written were for that reason incapable of being questioned, it might, like all mere artificial expedients, become the instrument of injustice. The provision of the Statute of Frauds, according to which every bargain for sale and delivery must be accompanied by certain forms in order to be valid, is an artificial expedient; and, were it not daily set at nought by our judges,

would be a fruitful source of the failure of justice. Generally, and very nearly always, the usualness of an agreement is not only *primâ facie*, but conclusive proof that it ought to be enforced; and this is so of agreements affecting both things and persons; whether the enforcement be direct, or indirect through a claim lying for redress on a breach of the agreement. Judges are extremely unwilling to set aside agreements between individuals on the ground that they are contrary to public policy; for any one to seek a release from the effects of a bargain for such a reason is suspicious; and the injury done to society by the fulfilment of a contract must be very plain and positive before such voiding is granted.

Disputes concerning contracts about wages are of two kinds—claims for wages by those who allege them to be due, and detained (these are simple, and easily disposed of); and actions to compel performance of agreements of service. In England, such proceedings for the most part arise between merchant seamen and the owners of ships; and the breach of an agreement of this kind by a seaman, when solemnly and legally entered into, is treated as a criminal offence. There is an injustice in this; and on one rather recent occasion when a similar breach of agreement occurred on the part of gasmakers in London, the opinion of the whole labouring population of the country received a shock, when the men who left off work in the middle of a term of contract for service were punished by imprisonment. The argument from the necessity of the case was certainly pressed farther than it should have been; for in such a vast community as that of London, the vacancies produced by a number of men suddenly striking work could, in almost any conceivable case, be filled up with small difficulty. It is necessary carefully to distinguish

between the action of labourers who strike work, in what very generally are its two parts. To leave off work in violation of an agreement is one thing ; to conspire to prevent, by force or influence, others from working, is another thing ; the first is not a crime, and is only by artificial law a misdemeanour ; the second is a high civil offence. Very often the outside public opinion does not discriminate between the two stages of the action in a strike ; and injustice is accordingly done towards those who are entitled to blame in both matters, but to punishment by law in only one. To deprive men who refuse to work out for the time they have agreed for, of any remedy in recovering wages for any part at all of their uncompleted contract, should be a sufficient deterring reason with them against such breaches ; there is no equity in treating labour contracts in this matter as differing from all other contracts, the enforcement of which is matter of civil and not of criminal jurisdiction. With respect to seamen who have signed articles and received earnest money, the pretence for treating them as offenders, if they secrete themselves, is that they are defrauding their employers ; who, if the law in this point was changed, would and could easily protect themselves by leaving off the mischievous system of making advances. It is usual for the period agreed on for a service to be unbroken, to accord with the period for which wages are paid ; but custom settles this, law in England generally following the custom. In France, where artificial law is more prevalent, custom is less attended to : for instance, in domestic service, a week's notice is all that is required on either side ; while in this country a month's notice is usual, the period for which wages are paid being generally a month. Contracts for perpetual or life service are not good in law ; they are essentially inequitable, being of

the nature of slavery ; and contracts for long periods, except in the case of apprenticeships, would be found difficult of enforcement ; for supposing a man enters on an agreement for a clerkship, or the like, for ten years, he is almost certain to be paid a yearly salary ; and it is practically in his power to break his agreement whenever he receives a payment ; and his employer would find it difficult to establish any substantial damage, unless the clerk had contracted to serve at an unreasonably low salary. All the arrangements which prevail in many of the tropical colonies of European nations respecting the terms on which emigrants from the thickly peopled countries in their neighbourhood are employed and held to service—their so-called emigration often being no better than abduction—are absolutely unjust, and even wicked ; it is a shame for England to permit of them ; and a double shame to enter on treaties with other nations of Europe having colonies in the tropics, allowing a virtual inhuman slave-traffic in the persons of our own fellow-subjects.

The interest of these things in relation to the questions raised by the socialistic advocates of a reshaping of our property laws is, that every item, even those provisions which enforce contracts which ought not to be enforced, is an evidence that mankind in general regard the binding nature of them in a moral light ; and that an interference with them, on the socialistic basis, is a way to a revolution utter and complete, not of men's arrangements only, but also of the popular view of those principles which are natural and not capable of being in reality and permanently set aside. Part only of the designs of those schools is practicable ; for it is possible to carry out such a revolution as they contemplate, in the laws affecting

only special descriptions of property; and one of the means taken to effect such is to depreciate the moral position which belongs to contracts. It has become within some time back very usual to depreciate the morally binding nature of contracts in general by referring to the numerous cases in legislation under which special interpretations are given to certain classes of bargains, whether the exact terms of the bargains admit of those interpretations or not; and the exceptional nature of such legislation is often overlooked, and those cases which are necessarily exceptional are assumed to be general and normal. If, then, this whole aspect is shown to be erroneous—contrary not merely to precedent, but to human nature and to possibilities, in reference to one kind of property, and if it be shown that the differences between that kind of property and all other kinds are not generic but accidental—the socialist theories are proved to be fallacious. Respecting chattels, there is a practical impossibility in going back on the history of them and of their manufacture, if righteous title to their possession is to depend on no injustice having been practised in that manufacture, and in the estimation of the prices paid for the things and the labour used in making them; and there is in the legal principle that a man, having accepted the closing of a transaction, has barred himself from going back upon it or calling it in question, an equity supported by custom, and which appeals to the common sense of men. There is not an article in common use the price of which is not made up of numerous elements, insomuch that it would be impossible to trace its history, including what and where and when the cost has come from. Any socialistic action of a retrospective nature is impossible; and it is, therefore, only legislation of a regulating kind which has to be watched. One

economical truth is never to be overlooked, that labour is a commodity with a market value; there is a disposition becoming prevalent, not so much to overlook this fact as to reason as if it were not applicable in practical legislation. Mention has been made in a former part of this treatise of the factory laws of this country, of France, and of Germany. These laws are represented to be an interference with the liberty of individuals in making the best mutual bargains they can, on the one side for hiring, and on the other for disposing of, labour; this is a misrepresentation both of their intention and of their effect. Their intention is to carry into operation universally what was already a general and useful custom; that is, to limit or shorten the hours of work in all employments, more particularly in factories; and their effect is practically to leave production and the rate of wages very nearly as they had been before the enactment of the law. There was also an intention that these laws should have a sanitary character, which intention has been to some extent carried out. They are no more an interference with people's liberty to employ their labour to the best advantage than it is an interference with property to expel a bone-mill from an inhabited town. Yet the existence of such laws is seriously brought forward as a precedent to justify direct interference by law with the forms and terms of many mercantile contracts, and this even in opposition to, and not in administering, custom. According to an old doctrine of law, derived from times when the relation of employer and employed was really that of master and servant, and resembled in some things that of owner and serf, a master is in this country responsible to any one to whom his servant works damage. This is not universal, for the servant must be acting in his capacity as such when the

damage is done ; and the servant's default of care, and not his malice, make the master's responsibility ; also, till the enactment of a recent law, that responsibility did not exist towards others in the same employment, but only towards strangers. According to the recent legislation on this subject, this limitation of the liability by what was termed common employment, ceases ; and an employer is now, in some matters artificially defined, liable for damage done to any and all persons whether in or not in his employment by the fault of any and all of the persons in his employment. If it was right that such a responsibility should exist at all, it appears unreasonable that it should not be general ; and as the persons most likely to suffer, in some occupations, from the carelessness of workmen, are their fellow-workmen, the effect of this "common employment" application was to reduce the responsibility of mine-owners and some other species of employers of labour to a very small thing indeed when accidents producing hurt occurred. Under this view the principle of the Employers' Liability Act is reasonable. But the original principle, that a man should be responsible for the acts of his servant, and by inference for the consequences of those acts, is not properly, and ought not to be, absolute. Its definitions are imperfect ; for what is an employer, and what is a servant ? If a man's coachman, driving his carriage and his horses, runs into another carriage and wrecks it, the employer is responsible for the damage, because he is the employer ; but if a man employs a hackney-coachman to drive him, and such a thing occurs, the hackney-coachman is responsible, although he is employed by the same person quite as much and as directly for the occasion and for the time as if he was his ordinary servant at weekly or yearly wages. This

inequity comes from the law levying such responsibility having been adopted when the relation of a servant was more than the trade relationship which it is now; when it was much more absolute, and kindred to that of a serf towards his master. It is inapplicable to present relationships and circumstances; and the responsibility for the acts of others ought to exist only when the person employed is not generally but specially carrying out the instructions which produce that damage in respect of which the liability ought to reside somewhere. It would, however, be an error to suppose that there is in the Employers' Liability Acts anything socialistic; they have their origin in mistakes in jurisprudence, being at the same time made popular with many by their throwing burdens off those to whom they legitimately should belong, under the idea that those who exercise the function of labour in its primary form have a claim from the nature of their function to exceptional relief. Those laws accordingly, in their present forms, are "class legislation," involving wrong applications rather than wrong principles. There are other and more remarkable recent examples of "class legislation" which do involve wrong principles; and there are many projects which have not reached so far yet as to be formally proposed for enactment, which involve them also. About the time, now nearly ten years ago, when a very great inflation prevailed of the whole trade of England, and more particularly in the trades in minerals and coals, a great and marked advance took place in most kinds of wages; as was natural, the greatest advance was in the wages paid in those trades which at the time were most prosperous. There was a peculiarity then to be observed in the manner in which this advance was brought about. During the years previous to that time, a permanent

increase of wages in many important employments had been almost always preceded by disputes more or less sharp between employers and workmen; and these disputes frequently led to partial strikes of work, and more often to threats of striking; the result of a partial strike, as it was successful or not, in obtaining higher pay for the labour, invariably governing the rate of wages far beyond the area of the strike. The tendency during the whole period of general prosperity, which reached its climax about the year 1872, was towards an increase; and there has since then been no marked general decline, although in particular industries there is a considerable decline from the high rates of that date. What occurred then, more particularly in the mining districts, was a great increase in wages following almost directly on the advance in the price of minerals and coal, without the instrumentality of strikes, but to all appearance spontaneously. When the downward progress of prices set in, a progress which was by no means generally unforeseen in the mercantile community, the inevitable reduction of the inflated wages of colliers and iron-workers followed; and this was resisted, in most cases unsuccessfully, by the old method of striking work. This series of strikes was on the whole very much freer from the bitterness of feeling which generally comes from such transactions than any series which had preceded it. In some instances, where a good understanding prevailed amongst the employers towards one another, and where there was a disposition on both sides to accommodate, and not to press disputes to actual hostility, a suspension of work being often a very hostile proceeding, agreements were made between mine-owners and colliers to choose arbitrators, and to submit to such decision as the arbitrators should judicially determine. This plan

had much success, and it attracted a large amount of attention from others than those who were affected by it. Many persons thought that a means had been lighted upon which would abolish for ever trade disputes, or rather would provide for disputes never reaching to a mischievous height. It is evident that such arbitrations could carry only a moral strength; for either party might decline to act on the decision, and there are generally ways of finding excuses in cases where it is impracticable to enter on a formal binding bond of submission; besides which, in the larger trades, the workmen could act only through representatives, having thus the double power of repudiating either the representatives or their acts. Accordingly, while at first a considerable amount of success attended the system, that success has not been universal or constant; and within the present year a very conspicuous failure occurred in Staffordshire, owing to the refusal of one of the parties to abide by an award, which had been, however, contingent in its form. There are two general objections to the whole system: if there is such moderation on both sides as to admit of an agreement to submit a dispute to arbitration, and, what is still more, to agree on the composition of a tribunal, it would be stretching the amount of mutual complaisance very little, were the parties to settle their difference unassisted. Something like this did take place; for there is no doubt that several of the decisions which the unconcerned public supposed to be the work of referees, were come to independent of them, the referees being perfunctory. It is another and stronger reason for questioning the policy, that if a refusal of the result of a reference occurs, it either is or appears a breach of good morals, and is far more exasperating than ten strikes. It seems, besides, a helpless and almost contemptible thing

for two parties to confess, as they do, their inability to arrange matters between themselves, which differ from all other mercantile bargains only in being made between one man and five hundred instead of between one man and another; and it is a bad moral lesson to both masters and men to accustom them to think that there is something generic in the difference between wages contracts and other contracts. The system attained considerable magnitude in some parts of England, and some permanent arbitration boards were instituted. As observed above, results have been attributed to it greater than it really merits, and those concerned as well as others have been deceived in their estimate of its practical importance. This error on the part of the working men is not singular; all men perhaps are liable to ascribe results natural in themselves to the machinery through which the results present themselves. The working men of England very generally believe that the increases which have taken place from time to time of wages have been owing to the very general system of trade combinations and strike organizations which has been no less powerful during the last ten years than during the twenty previous; and this opinion is naturally encouraged by the heads of the trade societies, who account for the reverse tendency of those ten years by representing, sincerely no doubt, though mistakenly, that the action of the societies has arrested and lessened the undeniable decline. No more answer to this is required than a reference to the wages of domestic servants, the scale of which, since forty years ago, has advanced, and is advancing still, more than of any other kind of labour; and that with no organization or combination whatever, of which, indeed, that order of the community is by its circumstances the most incapable. It appeared to some persons that a great and

beneficial change would be effected in the trade relationships of England in general by the enlargement of the arbitration system, both in its extent and in its scope; that, for instance, it might be expanded into a voluntary representative legislature or semi-legislature, which should have authority over not only wages, but hours of work, sanitary arrangements, and other things. Some went so far as to contemplate the eventual incorporation of the arbitration boards, and making their decisions carry the force of legal awards. Supposing that the system had spontaneously expanded, and supposing that in the course of time these boards came to be regarded with universal reverence, and their decisions came to be received as general matter of course, a very strong case would arise for their adoption into the public polity of the commonwealth. If, at the same time, the democratical movement of the present generation, which at present shows no symptom of abating, proceeded, it would be almost impossible that such an addition to our polity should not result in a great sum of class legislation, nearly all of it probably mischievous to the community, and mischievous also to those in whose interest it would be framed, whether they supposed so or not. At the very best it would be a revival, in a not very varied form, of the guild system of the Middle Ages; it would revive protective and exclusive enactments, towards which the heads of the trade societies are too much disposed, and would go far to undermine the sound economic idea of competition, substituting for it erroneous ideas, followed by erroneous applications, of combination.

[It is a lamentable thing that in the most important of all trade relationships, that of master and man, the great majority of the men should habitually regard their customers as their enemies. Anything in legislation, in jurisprudence,

or otherwise, which does not present the mercantile aspect of that relationship as the first, and other aspects of it as secondary, is mischievous—mischievous because false.]

Special
taxes on
property.

The late Mr. Mill is a high authority on many scientific subjects—among the rest, on matters of practical and theoretical politics, both economical and social; in particular, he had studied more minutely than any other of his time the problems of the incidence of taxation; and he was deeply informed on that branch of economics which treats of the distribution of the products of industry. His ideas had generally a mechanical basis, and even in the abstract sciences he insisted on referring everything, fundamental ideas included, to experience. It is not, therefore, surprising that, regarding as he did the prosperity of the commonwealth, as distinct from the individual prosperity of its members, as the highest good, he was prepared to recommend political and social measures which struck at individual rights; uniting, as such philosophers often do, a disregard of the natural rights of persons, with an almost extravagant estimate of their political rights as members of the society. Two of his projects for increasing the well-being of the community are decidedly socialistic in their conception; socialism being regarded generally as the practical and generally extreme reduction into effect of the doctrine that society, being the creator of property, is entitled to deal with it absolutely and without accountability. One of these projects—that which, in so far as he advocated it, was the latest in date—was for the state to assume, at the decease of the present possessors of land as they come to die, such portion of the rental of the land as should

not be represented by its natural industrial value, calling this portion the unearned increment. The equity of this assumption—resumption he would call it—rests on the following reasoning. Land was originally granted to the predecessors of the present owners to be occupied by them industrially; to cultivate as fields and gardens, to build houses upon, and so forth; it is still of the same value to them that it always was; and it is of the same general good of the community that they should continue to occupy it industrially; and there is no reason to disturb them in their occupation; but as in process of time, and in the course of the growth of society and the wealth and population which it produced, this land, from its scarcity and the demand for it, acquired a money value far beyond its industrial value, and far beyond the cost of any labour which was ever laid out upon it, this unearned increment is the creation of society, and society has a right to it. But as a title has been given to its present owners, and they would consider themselves badly treated, and a kind of faith would be broken with them were this unearned increment taken from them roughly, Mr. Mill proposed to wait till they are dead, and then “resume” the rights of society, and nobody would have any reason to complain; for all that their children have of interest in that property now is not even a contingent remainder, only an expectation, which has no market value; and a man cannot be robbed of that which he never had. A bright, a splendid picture can be drawn of what vast wealth would now belong to the English commonwealth, if, instead of granting away all the land in the country to private persons eight hundred years ago, the state had kept such a hold upon it as to be entitled now to its incremented value. There are thirty millions of acres of

arable land in England, intrinsically worth a pound an acre of rent ; but their actual letting value is a hundred and eighty millions per annum ; leaving a revenue to the state sufficient to pay all its expenses, pay off the national debt in a few years, and go to war again, or found colonies, or spend on science and art. The other proposal of Mr. Mill spoken of is to be found in his "Political Economy." It is not inconsistent with the above, in its conception ; but probably there would be no room for it if the state assumed three-fourths of the real property of the country ; and if the two projects were carried out, in some cases there might be a danger of taking the property of the deceased landowners twice over. Mr. Mill regarded the right of making testamentary disposition of property as an acquired, and not a natural right, and did not believe in the inherent right of children to inherit, excepting for the general good of society ; he further believed the existence of a large number of unemployed or idle persons, with estates and goods sufficient to enable them to live without labour, how and where they pleased, to be a social evil, prolific of other evils ; and he proposed that the state should fix a limit to the amount which any man should be allowed to bequeath, becoming itself the residuary. He is said to have spoken of three hundred thousand pounds as the maximum which any man should be permitted to bequeath (or possibly he may have said to inherit). By this device he expected to improve society both morally and financially.

There is a newspaper published in Liverpool, called the *Financial Reformer* ; it treats, as its name points out, concerning matters of trade legislation, taxation, and public expenditure. The persons who conduct it appear to have very correct general views concerning the greater part of these subjects ; although they treat,

possibly from want of information, the glaring errors which still remain in the trade policy pursued in India and the colonies, with that strange neglect which has been spoken of in a former part of this treatise as almost characteristic of many of our soundest economists. They continually speak concerning taxation and expenditure with a degree of acrimony which would have been suitable to the discussions about the corn laws, when it was commonly thought that the food of the population was made artificially dear in order to subsidize the owners of land ; but which is quite out of place now, applied as it is to questions which can only by very strained reasoning, be hung on to class animosities. Two proposals have been advanced in this newspaper, and one of them pressed, which have much to recommend them from the view of mere finance : the first, that the land tax shall be restored to what it is conjectured was the intention of its institutors at the Revolution ; the second, that the interest on the public funds shall be reduced to three-fifths of its present amount, without option of repayment to the holders of stock. Respecting the first, the restoration of the land tax : if the original intention, when that tax was imposed in the reign of William III., was, that the tax should be a composition for the abolition of military or knight service, under which tenure many, if not the great majority of the estates in England had been held till Charles II., in this case the tax was of the nature of a rent, and the intention was carried into effect by a very clumsy method. On the other hand, if the tax was a tax, and not a rent, the fixing on a valuation once for all was unlike what had ever been done in the case of a tax before ; for it is a tradition in all countries that men ought to contribute to the support of the state according to their means and substance. It is supposed

that, its amount varying, or having during the last century varied, according to the annual vote of the House of Commons, it must be therefore a tax ; but the example of many oriental states establishes that the land assessment may be variable without losing the character of rent. The circumstances under which the commutability of the land tax by redemption at fixed rates was effected go far to show that it was rent and not a tax. This transaction took place in 1798, the first year of the income tax. Now, if the land tax was not rent, the income tax would in its operation tax the same property twice over ; and fixing it at that time for ever at four shillings in the pound on the valuation of 1692, and making it redeemable, was at least a record of the opinion of the generation under which the arrangement meant to be permanent was made. The writers in the *Financial Reformer* say this arrangement was one-sided, a juggle, even fraudulent ; that at the time it was made, the owners of land, who were affected most, had a commanding majority in the House of Commons, and made a bargain with themselves at the expense of the country ; and that the military service due by all owners of land was quite inadequately commuted for, even in the revolution arrangement, when the land was valued at its then correct worth. It is, however, to be observed that the Parliaments of Charles II. and William III. were quite as predominantly composed of landed men as the Parliaments of George III. were ; that if they had been as skilled in practical finance as Robert Walpole and William Pitt, they would have imposed, not a land tax, but a property tax ; and that the whole question of the terms on which it was proper to commute military service for money payments, a commutation which took place everywhere else as well as England, as essentially necessary to the pro-

gress of civilization and the division of labour, is one that is now entirely out of date, having been resolved long ago. The prescription, based on what in all probability was intended two hundred years ago, and certainly was carried into effect one hundred years ago, is also a valid prescription even against fraud. The other project of the *Financial Reformer*, the reduction of the interest on the public debt by an arbitrary act of the state, is based on a curious argument. The greater part of the debt was contracted by granting three per cent. annuities, by creating stock at one hundred and selling it at sixty. The present holders are the representatives of the original assignees of the stock; they have enjoyed five per cent. per annum for long enough; give them the sixty pounds that the state really received, or, what is the same thing, reduce the present interest in that proportion.

There is a constant stream of complaint directed against the present income tax, not so much against its principle as against the incidents of its operation; and those complaints appear of late years to be on the increase, probably owing to a decline which has been very general in trade incomes, not met by a proportional reduction in the amount of tax charged on the possessors of those incomes. There are other chronic objections of a more speculative kind against the tax, especially to the equality with which the present system treats incomes derived from realized property, and those which are earned. Some politicians recommend to settle all these controversies by a plan which would probably raise some new problems, that is, by what is termed a graduated property tax; so that those who have, say, one hundred and fifty pounds per annum should pay nothing, those who have five hundred should pay five per cent., those who have a thousand a year ten per

cent., and so on till all who have twenty thousand a year and upwards should pay fifty per cent., or one-half, to the state.

There are here five distinct proposals, all consistent with one another, and all, whether dictated by the same intention and spirit or not, characterizable in one classification, in that they, each of them, violate the hitherto received opinion that taxation should be equable; all of them being partial, pressing not on the wealth of the community, but on selected portions of that wealth; and all, excepting the last, setting aside the prescriptions of property. A graduated income tax does not set aside the prescriptions of property, because it seeks to avoid, in appearance, anything of the nature of confiscation, or the assumption of private property to the state. Its injustice, notwithstanding, is to be seen both in its principle and in its effects; one of its effects being, probably, that the owners of large fortunes would colourably vest fractions of them in the hands of men of straw, whom they would pay for assisting them in what a good number of persons would regard as a very justifiable fraud; or they would resort to all the legal shifts which trusteeships and the like could give them means of taking, to preserve their property. An unjust system may be workable—indeed, many systems which habitually violate justice have proved only too workable; but a system of injustice, quite monstrous in its proportions, is by reason of its monstrousness likely to defeat its own ends. An income tax of fifty per cent. would be likely to promote emigration among the higher class, with all the capital they could take with them. The reason that such a thing is unjust, is—the state's duty is to protect people's property, and not to rob them of it. Whatever may be, and are, the duties of the individual to the

society, no man who pays taxes will ever think otherwise than that he is entitled to protection in return for them; and to pay for such protection in proportion to the value of the thing protected is what commends itself to common sense and conscience. Supposing that, further than this, the amount levied upon large estates and on small estates respectively was not to be upon their magnitude, but according to the cost of their protection as undertaken and discharged by the state; in that case, as it costs as much to protect a small house containing one hundred pounds' worth of furniture as it costs to protect a jeweller's warehouse containing one hundred thousand pounds' worth of diamonds, there would be levied a tax upon the latter no larger than upon the former. Those who are taxed are, according to the principles now universally held as guiding in politics, entitled to have a voice in the disposal of the revenues which the taxes produce; and if such a plan were fixed on of raising money for the public uses as taxing the owners of property more than in proportion to its amounts as those amounts advanced, the persons so taxed would have a very equitable and easily comprehended claim to an increased direct amount of political power, which could be conferred only by a graduated mode of estimating votes; a method which would be most invidious, and would, more than any that could be imagined, produce an intensity of class hostilities and jealousies. This is absolute matter of experience; there are some municipal corporations where a partial system of local taxation on the graduated plan has prevailed; and where this has been, the effect of the division of the community into classes opposed to each other in no natural way is very easy to observe.

The proposals of the *Financial Reformer* to re-enact the land tax, on a system which would throw upon

owners of land the chief weight of the national expenses; and to reduce arbitrarily the interest of the national debt; are unsound in morals; both of those proposals being to set aside contracts at the will of one of the parties to the contracts—the state. And the former of these proposals is specially vicious in its principle, because it is partial; it proposes to make one kind of property bear what ought to be borne by all. This, like a graduated income tax, is virtual confiscation; and, though it is not so obviously so as the clumsy finance of some Eastern tyrants, who seize, according to no rule but their own wants and covetousness, the goods of the most easily plundered subjects, would ultimately have as bad moral, and nearly as bad economical results, as direct confiscation, in unsettling the idea of the sanctity, as of the confidence in the security, of all property. The project of an arbitrary reduction of the interest of the funds is probably the offspring of ignorance; either ignorance of the facts of the borrowing; or of those principles according to which money and mercantile bargains are, and always have been, regarded as morally binding. It is at this time very difficult to decide whether the system of borrowing at a fixed rate of interest, the capital varying according to the terms of the loan, or the system of borrowing at a varying rate of interest, is the most advantageous; or rather difficult to decide whether the state was or was not a gainer by taking the former, or ordinary system, during the great war with Bonaparte. The loans were effected at an average rate of about sixty; it is assumed, and without any proof at all, that they could have been raised in five per cent. stock at par. Now, the subscribers and contractors of those loans calculated on receiving not only their annual interest, but also on the market price of their stock eventually

rising; if the loans had been effected on a par basis, this advance could not have lasted longer than the term of years during which it would have been agreed that the state should not be empowered to repay the principal. It is doubtful if the whole of these loans, instead of at five per cent., could have been raised under five and a half or six per cent.; this is entirely ignored. Moreover, the present status of both funds and landed property is and has been recognized by the state always; and a property once recognized cannot be assumed without a breach of contract by the state; and this ought to be held as firmly by those who believe that property derives its existence from society, as by those who believe it to be anterior to society; and if there be any species of property which has been specially created by the state, while it has only recognized the rest, the state has moral obligations towards the owners of that special property even greater than towards the owners whose ownership it does no more than acknowledge. Creation, if such there has been, and recognition, which has been always, are equally of the nature of gifts; and gifts are not gifts at all, but only loans, trusts, or deposits, if they be revocable or violable.

Both of the plans which Mr. Mill originates—the first of which spoken of above, that is the assumption of the unearned increment, is at this time attracting more attention than the other—are open to most of the objections which apply to all schemes of confiscation. The favour which that project has attained, while those who look on it with partiality generally acknowledge that the time for putting it in practice has gone by, is entirely owing to erroneous economical theories. There is no such thing as an unearned increment of value, in one kind of property more than in any other which increases in price—that is, in the appreciation of it by

the public—while it remains in the hands of its possessor without his bestowing any labour upon it. There is no such thing as an unearned increment of value in anything at all, unless it is assumed that “to earn” is a term applicable only to the lowest scale of wages or the reward of labour. A man makes a new kind of hats or umbrellas, and finds, when he comes to sell them, that his customers like them so well that he is able to double the price, although the lower price remunerates him. It is a whimsical use of language to say that he earns his profit while the price is low, but that the increase of price is not earned, because it is the result of the action of society in pressing a demand for his goods. If the same man, instead of selling his hats at the higher price, had sold in advance all that he should make in a year to a dealer, and if this dealer sells to the public at the double price, it signifies not, except to the persons; the profit is earned by the dealer instead of by the manufacturer. There is in this case no unearned increment of value, unless a meaning be attached to the term “to earn” which is not applied to it commonly, and which is applied to it in this case in ignorance or misapprehension. There is no difference between a dealer in land and a dealer in anything else; they both equally earn their increment when it comes—one perhaps more easily than the other; but earn it they do, whether they labour with their hands or not. It is said that the state has lost much by not having foreseen the great increase that there would come in the value of land; that if all grants made in the feudal times had reserved at least a partnership in the increase of value that might arise, enough would have been kept for the expenses of government without any taxation; that warning should be taken by our colonies not to allow land to be en-

grossed ; and so forth. Mixed with these sentiments, there is the idea that land differs from other property in its nature ; and there is often heard language which conveys the view, sometimes held unconsciously by those who use the language, that the land belongs by right to the state, which has done society a wrong by allowing private usurpations ; and even that the rights of the state are inalienable, and that property in land is by sufferance. It may be a very interesting historical speculation, what the course of English history would have been, had the successors of our first Norman king kept as firm a grasp on landed property as he did. It does not appear likely that if the Stuart kings had possessed a large revenue from rents and renewals, they would have assailed English liberty with such want of success ; perhaps there would now have survived in this country no more liberty than there was in Hindostan before the East India Company's conquests, where the system of the chief revenue of the state being ground rent has produced no more an economical than a political state of society to be envied. All these projects, without exception, are formed under a misconception of the true foundation of national and private wealth. The fund from which the support of the state must come is the sum of all the wealth in the society ; and the state is no richer, and the society is not relieved, by the state having property, ground rents and the like, of its own : for the sum of the wealth in the society is no greater ; and in all probability, with the best administration in the world, a state that attempted to be head landlord over all its territory would be so compelled to interference at its every turn and in its every action as to seriously delay natural progress. The principle or rule that no excise or tax should in any case be levied on raw material of

manufactures, or on manufactures in any stage whatever before they are complete, and that, if excise or indirect impost be necessary, it should be on the net and not on the gross, is applicable to land also, or at least points out the true and natural method of freedom. There is, besides, it is to be feared, prompting all these projects, a narrow covetousness, an unhealthy jealousy of rich men, which, when understood, is morally very repulsive. Mr. Mill's proposal to confiscate the excess of every estate above a certain value is amongst the most extreme. It is difficult to tell whether it would be of greater mischief morally, by promoting concealment, perjury, and bribery of official persons, or economically, by discouraging production; for no man would care to amass property which would not be really his. In fact, that project is so naked, so audacious, so like a copy of those financiers of centuries ago, who wrung money from usurers and Jews by drawing out their teeth one by one, that one can feel nothing but regret and shame that it ever had such sanction.

The right
of property
in land.

When William the Conqueror had completed the subjugation of England, he compelled all the land-owners, both those whom he had invested with confiscated estates, and those who had possessed their estates under the Saxon king, to do homage to him, not as their feudal lord alone, but also as the source from whence they derived their rights in their lands. He thus nominally made himself, the king, the original owner of all the land of England, from whom all titles were derived. But what he granted was not, as is

termed in law, the use of the lands, but enjoyment only during the lives of the grantees; and that enjoyment was subject to military service. On the death of a feudatory, the king was not, in the Norman theory, bound to reinvest his natural successor, although in many cases, probably the majority, promises were made of so investing that successor when the time should come; and, in practice, the heir-apparent had a prior claim to any other, unless for reason. On the institution of a new grantee, fines were imposed; and if a promise had been made of a reversion to a minor, the profits of the lands were assumed by the king during the minority. But almost always the succession was allowed to pass by descent, and not, as lawyers expressed it, by purchase. Custom ripened into law; and though the theory, and sometimes the practice, of William the Conqueror endured for three reigns, it does not appear to have actively survived the civil wars of the time of Stephen; it certainly was all but extinct against the time of the charter, and against the reign of Edward I. had no more trace of existence than it has now, when still all landed property is supposed to have originated in royal grant. The continued existence of quit-rents, and other dues such as services, generally commuted into money rents, is not inconsistent with the absoluteness of the right of property in land, which since Edward I.'s time at least has been the received theory in law of that right, wherever it might reside. It was in that reign that perpetual entails were first recognized, the general right of primogeniture having developed itself under Norman custom gradually. The common law of England always regarded perpetuities—that is, permanent settlements of property either in a defined line of succession, or possession by corporations with perpetual succession—with abhorrence; it has never so

regarded primogeniture in succession to real estate, which is matter of custom in the greater part of England, gavelkind being the custom in other parts. There is no record of the courts of common law ever having set aside an entail, although it is very probable indeed that multitudes of them were practically voided, before the middle of the fifteenth century. In a celebrated case (Taltarum, Edward IV.), a legal juggle was invented, by which the life-tenant and living reversioners were enabled to dock an entail, and transform the interest of the last survivor into a fee-simple or absolute estate. The proceeding in Taltarum's case was the model for all similar transactions for nearly four hundred years; it was in the reign of William IV. that beneficiaries in entailed property were enabled to dispense with going before the Court of Common Pleas, and to act directly by cutting off their entails by deed. The history of the action of our courts of law in respect of tenures is similar to the above. As long as sub-tenants or tenants of crown feudatories were in point of fact vassals, owning their holdings by right subject to the performance of service, and payment of rent and heriots, the courts recognized their rights; and at length, by the decisions on copyhold which occurred in the reign of Edward IV., placed these tenants in the position of owners, subject to the customs of the several manors. Where, as was the more general case, vassalage ceased, and tenancy under contract began, the courts affirmed the contracts, and interpreted their terms, when there was nothing special, according to custom, making the contracts determinable at the option of either party, landlord or tenant; and, as legislation interfered from time to time regulating these contracts, the courts interpreted them according to statute; but always with a leaning to custom when the statute, as too frequently

happened, attempted to supersede it. It is accordingly observable, that the general course of our law, as declared by the courts, and as usually confirmed by statute, has been towards absoluteness of property rights, in opposition to division of rights. This appears by their recognizing grants from the crown as being absolute, the terms of the grants being kept to; in their opposition to perpetual settlements, otherwise termed limitations, in speaking of their provisions; in the enfranchisement of copyholders; and in the uniformly held and applied doctrine, that tenancies, even under leases for ever, do not divide the estate in the land, but continue the estate as before the tenancy, subject to the contract on the part of the lessor. Contrasting this course of legislation—for legislation it is virtually—it is evident that it is much more civilized than that which went before it, that is vassalage of the feudatory under the crown, and of the villein under the lord; it is more civilized than the practice of rundale, which still subsists in remote parts of Ireland; than the similar plans of triennial allotment prevailing in great part of Russia; than the old system of tenures in Bengal before Lord Cornwallis's permanent settlement, when the ownership was divided, and not always defined, between the crown, the zemindar, and the ryot; and more civilized than all those tribal and common tenures, which are merely elementary, that prevail sometimes among nations in the earliest agricultural stages. The example of England has been followed in the United States, where the absoluteness of property in land is even more practically complete, by the universal cessation of the habit of settling and entailing, which their laws, in imitation of ours, still permit within limits. In France, Switzerland, Belgium, and the greater part of Germany, this property is also as absolutely held as

it is possible for property to be; all the special and restrictive customs, derived from the feudal and even barbarous times, having been swept away in France and Belgium during the great revolution, and in Prussia by the legislation of Stein and Hardenberg. In those countries, and in America, tenures have been treated in a similar spirit; the laws respecting them being based on agricultural custom and on the idea of contract. It is only in those parts of Europe which are now slowly struggling into something like an imitation of the civilized order of the West, that those older forms of tenure prevail which treat the tenant not as a contractor, but as a part-owner; Russia, the Turkish principalities, and some of the metayer parts of Italy. The progress of the degree of absoluteness in landed property has been generally so parallel with the progress of civilization, that some persons have considered civilization, if not society, to have commenced with the existence of fixed and settled landed property; as though society, in any real sense, did not and could not exist in the nomad state. It may be going too far to say so, for the germ of civil society is the family; but it is probably not going too far to say, that without the existence of private property in land, or at least the recognition of private rights over it, progress in civilization would be impossible. The existence in many parts of England of common land is no difficulty, or contradiction, in the way of this view; for common land really means land over which a certain number of persons have common rights; and the enclosure or care of it by the public is making it in reality public land, which is a different thing, and an innovation, in the public interest, on the ancient custom and enjoyment of it. There is only one change in English law, and that not a large one, which is required, in order that the

absoluteness of the right of owners in landed property shall become in all cases practically as well as theoretically complete; that is, the law ceasing to recognize the creation, by entails twenty-one years beyond lives in being, of interests in unborn persons. Such interests are in themselves unreasonable, for a supposed unborn person may never be born; and no public object is furthered by permitting of this—it is not too much to call it—absurdity. The perpetual entails of the Plantagenet times had, it may be supposed, a political purpose, as the perpetual entails of Scotland, which are still curiously tolerated, had during the Stuart commotions; they prevented estates from being taken permanently from a noble and probably respectable family for the treason of one member of it. No such political reason can be adduced for the toleration of the modified system of renewable entails which is still prevalent in England. There is an opinion which, if not dying out under the spread of sound mercantile ideas about land, may be expected soon to do so, that the habit of entailing great estates is a potent means of perpetuating families. Even supposing that this opinion is correct, the public advantage in so perpetuating them is not so great as to justify a permission by means of legal process to imprison property to the detriment of those living, and by consequence of the commonwealth. But it is not true that the practice of entailing landed estates does promote the interests of the families to which they appertain; on the contrary, if an estate of the kind, especially one the value of which is stagnant, becomes embarrassed, the existence of the trammels with which it is contained by the settlement is a cause of constant and often increasing re-embarrassment, from which it could often be freed were a part sold and the bulk left. There may be, and

in a large political view there are, reasons for entailing by public act some great properties, which are attached, for instance, to the crown, or to the descendants of men like the first Churchill or the first Cecil, whose memories and whose actions are a part of our national inheritance ; there can be no reason, in our social state, or in any that is likely to arise, for any such general system. This relic of a condition which has entirely vanished is small, in its effects on the landed property of England, and on the manner of dealing with it as an article of commerce, compared with some things, not so much in our law, as in our procedure when buying and selling of real property takes place. It is a tradition among lawyers, which has been adopted and embodied to a very great degree in our statute law, that a person seized of real estate has not good title to it unless he can prove his title—that is, can show that his possession of it is properly derived ; making in this manner real and personal property to differ, inasmuch as possession, unquestioned on grounds of fraud or robbery imputed, of chattels, is satisfactory evidence of ownership ; while a man coming to sell land is required to show how he came by it, and is inferentially assumed to have stolen it, unless he can establish the contrary. More than forty years ago the late Sir Robert Peel called public attention to this (in Swift's words) standing absurdity. It is difficult to understand how the English people tolerate a system of buying and selling the most important kind of property in existence, which, if applied to other things, would in a day bring all commerce to a stop. To state the case is to prove the absurdity of the system. A man who sells a horse in a fair is not called on to prove that he has not stolen the horse ; while one selling an acre of land is called on to prove that he has not stolen it : although to steal a horse is feasible, if

not easy, and can be done best by one man ; whereas to steal land is very difficult, and requires a conspiracy of two, probably of more, very clever as well as unprincipled men. Under precisely the same law, fundamentally, as ours, the Americans have entirely got rid of all the cumbrous rubbish with which we continue to allow our conveyancing of real property to be perplexed. To do the same in this country, by, in the first place, a general registration of all deeds in county offices to be instituted for the purpose, and, afterwards, a continued registration and systematic indexing of the same, with power to the registrars to issue certificates which should be valid proof of ownership, is a conception so simple that there is a reasonable supposition that its very simplicity is the chief objection which would be offered to its carrying out, by those useless legal pedants of both branches of the profession of the law, whose profits might be diminished by a reformation. In France, Belgium, and the greater part of Germany, and in all the British colonies, plans like that indicated are in use ; it seems ridiculous to inhabitants of those countries, and to Americans, that land and other real property should not be as easily bought, sold, and transferred from man to man as stocks and shares. A reform of this nature, in our procedure in dealing with real property, is not necessary in order to render the nature of that property absolute ; for absoluteness of possession and of title may be perfect, so long as the property continues in an inert condition ; the reforms required being concerning another thing, the facility of setting the property in motion.

These three conditions of real property in England, all of them the creation of artificial and mechanical, as opposed to natural, legislation—the deriving all property from grants, or supposed grants, from the state ; the

permitting of settlements of that property limiting the freedom of dealing with it by the living, in the supposed interest of the unborn; and the restricting the dealing with it by sundry created and thoroughly artificial difficulties—have a direct and very strong effect, in encouraging the erroneous and mischievous opinion, that there is something different fundamentally between the nature of land as property, and the nature of all other property, and especially chattels. That opinion is not a mere theoretical opinion; it colours our legislation and our politics. Our legislation is so deeply coloured by it, that on the occasion of a very great legal reform respecting the procedure in the matter of selling landed property in Ireland, devised by Sir Robert Peel, the statesman who for long advocated a general registration of all deeds and trusts, the legal fiction was adopted of making the new jurisdiction not the declarer of title and ownership, but the conveyer of property; thus re-enacting the proceeding of William the Conqueror. Further than this and its like, no reform which has as yet been adopted in our legislation concerning land—and many laws have within the last half-century been made which are real practical improvements—has ever gone to the foundation of that species of property; all those reforms have treated it as special in its nature, and as to be treated and dealt with on special grounds, peculiar to it essentially and not accidentally. It is right that law should be founded on fact, and should be scientific in its application to facts; and the whole current of it may be influenced, and in the case of our land laws has been influenced, by a reading or interpretation of the facts respecting the origin of property in land which is entirely erroneous. The land which a nomad tribe occupies it never possesses as property; occupation does not con-

stitute property. Civil society in a progressive form commences with the stability which cannot exist in a nomad state; and when the tribe settles, and begins to become a society in the civil meaning of the word, while the tribe may dictate to its members the terms on which they shall be protected in the enjoyment of their individual lands, the members enjoy them in their capacity as individual units, and not as representatives or assignees of the society; and, as has been shown above, the progress of civilization, that is, of good social order, goes on, and according to all observation and probability must go on, parallel with an advance towards the completest absoluteness and recognition of that absoluteness, of the individual right in that species of property. The earth is God's gift to man. Suppose that it be contended that "man" means the human race, and that, therefore, no man individnally can have a good claim to any part of the earth unless the human race in general had made him or his predecessors a present of it; property in land, except by the whole human race, under a socialism large enough and complex enough, though its vastness and complexity would not make it proof against mortality, to make law and administration impossible, would be as impossible as that law and that administration of it. It may be contended that the whole human race, to whom God gave the earth, is represented by certain sections of it for certain purposes; that He gave England to the English, France to the French, China to the Chinese; and that all rights to the lands He gave to these several nations must be conveyed to the individuals of the nations through the several national authorities. If so, and if it be open to a nation—that is, in its first stage often a mere vagrant tribe—to appropriate to itself part of the

general inheritance or estate of humanity in general, it is not unreasonable that what is right for a large part, a multiplicity of units of the human race, to do, should not be wrong for one unit of that race to do. It is perfectly true that the earth is God's gift to man; it is not true that it is the only gift God has made to us; and it is not true that it is a gift under any other terms or made in any different way than its fruits are given. If socialism in land be a true theory, socialism as applied to the products of the land must be true also; and property in everything but a man's own limbs and brains, unless derived from the state, is impossible. But man existed before human society; or if the origin of the human race was synchronous with the origin of society, there is no historical proof that the property in land was public before it almost all became private. Those societies or states in which the land belongs to, or was granted by, the state, all derive their constitutions not from nature, but from that which is artificial, that is, conquest.

The government of the United States, in the year 1837, passed a law called the Homestead Act, according to the provisions of which any citizen of that country (which in practice means any person residing in it), on payment of a sum of five shillings per acre, for any land in the territories of that empire, and on occupying that land in *bonâ fide*, acquires an absolute property therein. Under this wise law—wise because it is in accordance with the economic fact, often unknown, and not yet enough recognized, that land as such, and in the savage state, has no commercial value at all—under this law that country has attained, in less than half a century, to an amount and extent of industrial development which those who live in Europe are assured, and can readily believe, that the facts and figures by which alone they

can appreciate what is proceeding can convey no proper idea of without seeing it with their eyes. Five shillings an acre is a registration fee; or if it is more, it does not pay for anything except the expenses of survey. It is not difficult to understand why it is that land has no commercial value independent of the existence of people who can occupy it; it differs in this from no other article of commerce. Value is constituted by judicious labour; the commercial value to which land attains, like the commercial value which attaches to its products, is a consequence of the labour expended upon and around it. An acre of the most fertile land in the centre of Africa has no commercial value; neither has a diamond till the man who has found it can bring it to market; and as land cannot from its nature be brought to market, it must wait, in order to become valuable, till the market is brought to it. Commercial or exchangeable value is the creation of an industrial community; this applies to all things, land and chattels; and the idea of an intrinsic something in land which endows it with a value of its own, is no better than a superstition, a tradition from the theory, celebrated in its day, of the Duke of Sully, that land is the only valuable thing in a state, and that there is no other wealth than that which is derived from cultivating it.

The error that land differs in its nature from chattels as property, is often expressed in another form, thus:—Land is not made by man, but all other kinds of property are; the houses built upon it, the crops which it grows, are the product of human labour; the very ores which are drawn from the depths of the earth are the product of the labour consumed in mining them; therefore the land can never become property in the same manner as chattels, if the right of property rests on a man's right to the fruits of his labour. It

is not too much to call this fallacy a popular one; for it is very often heard, and is believed in all sincerity by multitudes, superficial though it is. Land is not created by man's labour, but it is made arable by it. It is not possible to detach, in estimating the value of land, the part of that value which is supposed to belong to the land itself from the part which is supposed to belong to its cultivation—in common language, to the improvements on it; and for a very good reason. All its value, without exception, is derived from labour on and around it, as all the value of the products of land, whether animal, vegetable, or mineral, is derived from the labour which they have cost, and from the appreciation of the commercial public of their worth and utility. It is equally impossible, in analyzing, or in speculatively separating into its component parts the value of a chattel, to assign a part of that value to the cost of the land that has grown it (if a vegetable), and a part to the labour bestowed in growing it; or if mineral, as gold or silver, to assign part of its value to the ore, and part to washing and refining it. A quarter of wheat in London has the same value, whether it came from Essex, where land is worth seventy or eighty pounds an acre, or Manitoba, where it is worth from five shillings to ten pounds according to circumstances; in both places the value of the land being, if there be any, acquired. A stone or brick house is the product of labour; but the material, stones, bricks, or timber, are natural products in their crude state. In the same sense that land is not made by man, no more are bricks; and no more are those vegetable products which owe their existence to the operations of nature no less than to the operations of human labour. The fallacy spoken of sometimes takes a somewhat different expression; land, it is said, is a thing from which all things are

derived, and is a necessary without which the human race cannot exist; if any portion of the human race is deprived of its land, it is equivalent to extermination; and therefore the laws affecting the possession and distribution of land ought to be different from the laws of chattels. It is quite true that land is a necessary of individual and social existence; and so is seed-corn. The more necessary an article is to men for general use, the greater the importance of leaving the trade in it at perfect liberty. Society would be little injured by restrictive laws on the trade in diamonds; while restrictions on "the most useful of all trades," in times of scarcity, are the most ready means of aggravating the evils of scarcity.

There is a much more subtle objection taken to the sound commercial view of landed property, in the assertion that the quantity of land in the world, and more especially in each portion of the world which is occupied by a separate community, being limited; land is either a monopoly, or of the nature of a monopoly, and should, therefore, be either owned by the state, or have its ownership fenced round with such restrictions as it is found necessary to apply to the proprietors of monopolies, railways, docks, and the like, in the public interest. Without inquiring very minutely into the meaning of the term "monopoly," which is properly the engrossing of an article in the possession of one party, a thing which occurs with the land of any country only when that party is the king or conqueror of the country, and therefore who begins his administration by parcelling out the land amongst other owners than himself, it is evident that the idea at the bottom of this definition is that the quantity of land in the world being limited, and the possible number of the inhabitants of the world being unlimited, makes a reason

for dealing with land on exceptional principles. In this respect the objection to absolute ownership is speculative merely, as applied to the whole land on the surface of the globe; for there never has come a time yet, in which the supply of land has fallen short of the demand for it, over that surface. The population of the earth is, by all estimates which can possibly be made, greater at this moment than ever it was before; and even now those parts of the earth which are occupied by inhabitants in any degree of approach to completeness or crowding, are but a small fraction of its total extent. In about one-half of Europe, in Hindostan, in China, and in sundry spots along the coasts of the various continents, there is something like entire agricultural occupation; and everywhere else, there are tracts calling out for men to come to replenish and subdue them. Central Asia, Central Africa, Central Australia, all the two Americas; millions upon millions of acres in Spain, in Southern Russia, in Turkey, European and Asiatic; islands, large and small, dotted over the whole ocean; all with land fertile on the surface, and probably as fertile of those things which are second to food only in their usefulness to men below the surface. While nine-tenths of the world is unpeopled, or immensely under-peopled, the idea of scarceness or monopoly of land is a mere dream of the indefinitely remote future. Even in those parts which are most thickly thronged—in Belgium, in Bengal, in Barbadoes, those being chiefly agricultural countries—there is no real overcrowding; it is in more thinly peopled places that there is most poverty. Barbadoes is the most prosperous of our West Indian colonies; and this is attributed, and partly with truth, to the very density of its population. There has been but one famine in Bengal for above a century, and that famine

was the result of war; while in the other parts of India there have been many; and there never was one in Belgium at all. The density of population is generally the cause of the greater productiveness of land; for where land is in excess of the requirements of the population, minute and careful cultivation will not pay; the same amount of labour bestowed on a larger area, although often more destructive of the permanent fertility of the land, produces greater immediate returns for the labour. In this fact alone we derive a warning against any artificial interferences with men's dealings with land as a commodity; for it is certain that any laws except natural ones, which should attempt to regulate the conditions of ownership and occupation in a new and thinly peopled country, must become more and more inapplicable as the country goes on filling; but the laws would not be altered till after they had done mischief. That series of facts in the history of agricultural progress which has been generalized under the term of the law of diminished productiveness is not applicable as an objection to the above. That law is not peculiar to agricultural industry; it is no more than the assertion in respect of it, what is the case in all manufactures, that after a certain point the outlay on the manufacture, and also on the machinery used in producing it, ceases to be profitable. A man may make his spinning-machines and looms twice as strong as they were, and have them driven at an increased speed, so as to produce more goods, and it may succeed up to a point; but where that point is, experience only, or sometimes a shrewd instinct, can decide. In like manner there is a maximum paying speed, ascertainable by trial, for a railway train. So, as to the manufacture itself, in former times, when a man's butler had polished his dining-table till he could

see his face reflected in it, even the most punctilious housekeeper thought more labour thrown away. As experience, or the ordinary course of trade, can alone determine this maximum point, it is an unfit thing for legislation to attempt to regulate, or do more to recognize than it should do with every economical law, whether in regard of agriculture or anything else.

[Some observations made by Mr. Fawcett, in his recent work, appear to exhibit him as thinking that legislation concerning land and land tenures is justified in proceeding further in interference with liberty and the liberty of contracts than legislation concerning other things, *because* land is our food-producing machinery. It is right that the laws which apply to the affairs of mines should be different from those which regulate the affairs of ships, and enforce the authority of the captain; for the two sets of laws, or rather bye-laws, apply to different sets of circumstances; there is no occasion to enforce the use of Davy lamps on board ship. But that one branch of production, that of food, should be taken in hand in any way by the state, and contracts in the trade of it now dictated, and now traversed, by legislation, is no better than the idea on which the old corn law was based. If food is the most important thing in the world, the liberty of its manufacture and trade is more important than of everything else.]

Let it be supposed that at some distant time—ten centuries, twenty centuries, hence—the world shall enumerate ten thousand millions of dwellers; that the rich prairies of North America, the pampas of South America, the plains of Australia, some of them at this time uncrossed by a European foot, the banks of all the rivers which drain the centre of Africa, the now desolate sites of ancient peopling and civilization in Asia Minor; that Siberia and Tartary, and the valley of the Amoor, and all the rich and bright islands of the tropics, shall be occupied with busy agricultural,

manufacturing, and mining inhabitants; that for one steamboat now crossing the Atlantic there shall be fifty ships moved by some adaptation of the forces of nature of which we have yet no idea; that every ocean and every gulf and bay shall become a highway frequented like the Straits of Dover now; that there shall not be in all the world a man who shall be able without a gazetteer to enumerate all the cities which contain half a million and upwards of people; and that there shall not be on the whole surface of the globe an acre of arable land to be had under a yearly rent of forty shillings,—the idea of a monopoly would still be fallacious. If land is a monopoly, or is capable of becoming so, the productions of land are also of that nature, or capable of becoming so. Monopoly as thus applied means that land is limited in amount; and though the amount of its productions may be increased by cultivation, that is labour and the expenditure of it, yet this increase is not infinite, in reality or in conception; and as the use of land is for production, the increase of its productiveness is equivalent to the increase of its amount; which, if thought doubtful, is in an economical sense proved by the commercial value of land being always increased by whatever increases its fertility. If land, from its amount being limited—which practically at present it is not, and which practically it may never be—is susceptible of being engrossed by one man or one combination of men, and therefore ought to be treated by the laws as on a different footing from all other property, chiefly with a jealous eye to such contemplated monopoly or engrossing, the same applies to all other things as well as to land; and if the same method should therefore be applied, we are involved in an amount of embarrassing and hypothetical legislation, which if not actually a form of communism would pro-

duce most of its evils. There are many chattel goods, the conditions of which make them much more easy to engross than land can be, and there are some which are actually of the nature of monopolies. The ignorance of economic truth, and probably more, the covetousness, of the governments of the Middle Ages made treasure-trove the property of the state ; and treasure-trove was made in some countries to include the ores of the precious metals. Those metals are much more susceptible of being made a monopoly of than other things ; the Spanish government, for the purpose of maintaining their monopoly of them, kept the new world south of Florida barred for centuries against the rest of Europe, and received the usual reward of monopolists. For, allow that a combination of capitalists could establish a monopoly of the land, for instance, of a single county, it is not in the nature of such a combination to last ; and the sure and inevitable vengeance which violated economic law will take on its violators is a far more perfect safeguard against the like than the wisest laws, the product of the wisdom of modern and ancient times put together ever could be ; the experience of all times warning us against dealing with such by enacted law at all. Other things, chattels, are not only easily engrossible, but are actual monopolies ready made. The winner of the last Derby has a monopoly in his horse, for no other horse in all the world is his equal ; the owner of the largest ruby or diamond has a monopoly in his jewel ; the possessor of a painting by Raffaele has a monopoly ; but no reasonable man ever proposed to confiscate Bend Or, or the Pitt diamond, or a picture, to the state, for that reason ; or even to take them by compulsion, paying an extra price to compound for the compulsion. There is a house near Grassmere, in Westmoreland, which is said to

command the most beautiful landscape of mountains, valleys, and lakes in England ; and if Parliament thought right to take this house and the surrounding acres from the owner, and turn the estate into a public park, for the public use and pleasure, let Parliament do so, of course ; but it would do so, not because High Close is held in monopoly by its owner, but because the property is wanted for the public, as Thirlmere Lake was.

Morals and politics meet one another often ; and the sound and true doctrine, that a responsibility rests upon all men, owners of property, on account of the use that they make of it, is not a doctrine of morals only, but a doctrine in politics too, capable, like others, of being misapplied, and, when regarded too exclusively, of being changed from a truth into a destructive error. It cannot be doubted that there are many people who would look with detestation on any attempt to despoil any class of its rights ; who are uninfluenced by current and extinct communistic theories ; and yet who do think that there is a certain set of social duties imposed upon landowners, different in kind from the duties which properly attach to common rich people ; or, if not different in kind, at least certainly more exalted in degree ; and that this difference is essential. The feeling is a correct one ; but the class of social duties which attaches to the owners of land, in respect of their property in it, differs from the duties belonging to others accidentally only, and not fundamentally. Land, it is said, is a trust, or is a kind of property held in trust. This is true ; and so is all other property. But it is not so held from the society ; it is so held as all the gifts and all the talents wherewith men are endowed are held. The gifts of God to men are no less gifts because they are given for a purpose ; even the gifts of one man to another imply trusts. If a man gives his

son a thousand pounds, and the night after the son loses it in playing cards, his father will think his trust abused ; if a man makes his friend a present of a horse, and the first time the friend hunts he rides the horse to death, the donor has every right to think himself aggrieved. But these are social and moral, not legal, wrongs ; and while a responsibility exists to the society in its capacity as a state in multitudes of cases for a man's use of his goods or his estate, the responsibility is not entire, and it is not the business of the state to enforce the performance of every moral duty. It is true that property has its duties as well as its rights ; or, rather, that the owners of it have both duties and rights in respect of it ; but it does not follow that these are correlative, or that forfeiture or diminution of rights should be the visitation for a breach of social duty. Crime only is justly punished with forfeiture. Few instances could be found of a maxim more abused than the above ; its sentiment is profound, even beautiful ; and yet, when it is distorted by interpreting property to be only landed property, and when it is contended that those who neglect their social duties should lose their legal rights, it becomes matter of sorrow that the maxim was ever uttered in the unguarded form in which it has reached circulation ; matter, too, of surprise that so great a superstructure has been raised on what is after all a mere phrase.

The late Sir Robert Peel said that all men are protectionists in their own trades ; and, if this is true, it is not much different, that all men are for limiting the rights of the owners of that kind of property which they have not. In thickly inhabited countries, land is prized from its scarcity ; and in most countries it is prized because political power is generally associated intimately and undivorceably with the possession of

land. It is according to what is common in human nature that the owners of property should try to fence it with artificial barriers ; and it is according to what is common in human nature that those who are possessed of no property so fenced should be jealous of those whose property is so fenced. Every legislative and jurisprudential provision, which treats land as a different kind of property from chattels, is an indirect incitement to attack that kind of property which is exceptionally treated ; or at least an encouragement to theories about it which are certain not to regard its exceptional nature as adding to its sacredness. There are at this time an unusual number of such theories floating about in men's minds and speeches ; most of them are vague ; some are honestly and sincerely advocated ; some are advocated with the unconcealed object of general robbery. Such expressions as "The land of Ireland belongs to the people of Ireland," which are absurd, if not entirely unmeaning, appeal, notwithstanding their absurdity, to the latent covetousness which belongs to all men ; and which becomes active, often fearfully active, in revolutionary circumstances. It is clothing nonsense like the above with too much dignity to call it by the name of a theory ; it is to the practical form into which it is translated that it owes its authority among the ignorant and corrupted. In England, as distinct from Ireland, the covetousness of a few after land has taken a different form.

There is a project, the details of which are not very clearly put forth hitherto, which goes by the name of the nationalization of the land. Whether the land is to be bought up by the state, paying its full price in hope of a profit on its expected advance in value being realized ; or whether the land is to be taken by violence, and the present owners given a sufficient dole to induce

them to make no loud outcry ; or whether nothing is to be done during the lives of present owners, but that reversion only are to be confiscated,—does not appear. The language used to one set of people represents that they will be no losers, and the language used to others represents that they will be great gainers. The history of economical fallacies furnishes many similar projects, according to all of which every man was to grow rich without the expenditure of his own labour, and without the appropriation of the product of any one else's. All schemes of inconvertible paper currency are of the same order. If the project of nationalizing the land is, either to assume to the state existing or reversionary property, without paying the fullest compensation, it may be set aside at once on moral grounds ; if proper compensation—and it is to be remembered that proper compensation under compulsory purchase is generally considered, in England, at least, to be somewhat beyond the market value—is to be given, it must include the estimated prospective value upon which all the profit of the operation is calculated. There is some vague idea among the socialists of this school that if land is divided into small estates it will be more productive than if held in large estates ; and on this they build expectations of a profit by shifting the whole landed property of the country into another set of hands. It is arithmetically provable that the most profitable conditions for any kind of property are the freest conditions, and it is impossible for any artificial settlement of property to make it more productive than it would be in its perfectly natural state. If at present there is property which is not perfectly free (as there is) ; and if at present some of our statute law respecting tenancies, agricultural and otherwise, requires alteration in order to develop perfect freedom of action on

part of owners and hirers (as it does) ; those imperfections do not provide reasons for overthrowing a whole system, to build another up in its place, under which, certainly in its inception, and probably in its progress, there would be far less freedom than under the old one. Let it be supposed that the state shall acquire all the real property in England, at a cost, if paid for, of about four or five thousand millions sterling; or, still more favourably, that the state becomes landlord of everything at no cost at all; it is not difficult to forecast the economic results, under the two suppositions, first, that the operation is perfected without violence, or, secondly, that a revolution of more or less length, acuteness, and social strain shall be required to complete it. Suppose that it is carried out quietly, without a panic, political, or commercial, or financial; at the completion of the transfer there will not be one pennyworth more property in the commonwealth, available for the purposes of the commonwealth, than there was before it. Because the amount available for the use of the commonwealth is what the sum total of all the income of the various subjects or members of it can spare; and a shifting of the ownership of property cannot increase what the income derived from the use of the property will be; nor can it increase the product of the labour of what is termed the producing part of the community. On the contrary, it will, instead of increasing it, very largely diminish it; for the diversion of expenditure from its accustomed and natural course will produce a diminution, enforcedly, of production; and it will not be for a time, longer or shorter according to the magnitude and extent of the diversion, that industry and commerce shall have reached and accommodated themselves to the new channels and modes of production, and it may be that they never will. This is

supposing the revolution in property to be accomplished under the most favourable condition; that is, by a transfer, sudden, but unviolent in its accidents. It is an utter mistake to expect that, as the owners of the hundred and eighty millions of annual rent are (as they are assumed to be) non-producers, and mere consumers, therefore their rents will be saved to the total income of the added members of the community. Supposing that other members are subsidized or relieved to that extent, they, the apparent beneficiaries of the scheme, are given this hundred and eighty millions to spend or to use, instead of the former owners; and there is not a particle of reason to anticipate that they will spend less and use profitably or reproductively more than their predecessors. There is reason to anticipate the contrary; for property acquired in violation of natural moral law is never used, for reasons not economical, but lying not hard to recognize in the nature of mankind, for the real benefit of those who have acquired it. One notable example of the small benefit, if any, which a community derives from the sudden transfer of capital is furnished by the commercial condition of Germany after the payment of the French ransom in 1871; that was a trifle compared with the operation proposed in English real property. If, in addition to the commercial and productive dislocation which such an operation would produce, with its bankruptcies, its partial, perhaps general, destruction of credit, its ruin cropping up in every corner, even those at first apparently beyond the reach of the inundation, ruin acting and reacting on itself, till, as always does happen at last, the social and economic structure would attain a new health after the healing, not without scars, of its wounds; if, in addition to all these mischiefs, a political convulsion should accompany

the economical revolution, it would be no matter of surprise that the total value of all the confiscated property would absolutely disappear. Value depends not on cost and usefulness merely, but also on opinion; and it is in the nature of revolutions to produce more revolutions, till the spiritual vigour of the society is exhausted, and an artificial and anti-legal anarchy is wound up in a tyranny, more lawful perhaps than the anarchy, but far more fragile than the organic structure, even though that had been suffering from disease. It is impossible that an attack, successful as imagined, could be made on one kind of property and not made on others; and in the confusion following, more than half of all the wealth of England, and probably all the wealth that Englishmen possess in our dependencies, would be permanently lost to the commonwealth. We should see a spectacle somewhat like two men quarrelling over the possession of a barrel of wine, in their anger kicking out one end, losing the liquor on the ground, and probably fighting on after it was all spilt.

There is no exaggeration in the above; the experiment has been tried. At the time of the great emigration from France of a vast number of owners of land, driven or terrified into that emigration by the miserable scenes which accompanied the great revolution, their estates were confiscated by the new government; and, at the same time, great quantities of property, which had been in the possession of ecclesiastical corporations as landlords, were also assumed by the state; the total amounting, as closely as can be estimated, to not less than one-third part of the soil of France. It was expected that the proceeds of the sales of this property would defray all, and more than all, the expenses of the war which was then entered on with the continental powers and England. The calculation was entirely

falsified by the issue; the lands were sold but slowly, at low prices; the necessity of providing for the cost of military operations induced the government to issue, in vast quantities, promissory notes to be redeemed from the proceeds of the sales; and within four years from the commencement of the war these notes were repudiated, and the state became bankrupt. Before the Revolution, France, as a community, was one of the richest in Europe; the richest except England, if not richer in the sum total of the wealth of its citizens than England; but on the beginning of confiscation the greater part of that wealth disappeared. The great war, of more than twenty years' duration, was carried on, owing to the great successes of the French, and owing to the power belonging to France by its then geographical conditions, of throwing its armies on the ground of foreign countries, almost entirely at the expense of those countries; France contributing men, and foreign countries money. Notwithstanding this, during the whole Napoleonic period, that country did not advance in wealth; and the spectacle was presented at the end of it, of her principal enemy coming out from the contest with absolutely increased resources, able to support a public debt trebled in amount by the war; while France sunk into a state of physical lassitude, the copy of its condition of moral lassitude, from which it did not properly emerge till far on in the reign of Louis Philippe, a generation later. All accounts which have come down to us of the state of France in the time before the Revolution, for at least thirty years previous, represent that country as advancing in prosperity, although the government was poor; for the government, by ceasing to avail itself of the powers of the ancient constitution of the country, had practically renounced the power of imposing direct taxes on

property ; and for all that, and in spite of interferences with trade and production beyond any experience in any civilized country in the nineteenth century, France was advancing in wealth and well-being. All this was suddenly terminated by the violence of the Revolution ; not by the Revolution itself, but by the expulsion of the owners of property and the assumption of their estates. What made those events—the events of the Revolution—the most marked and the most lasting in their effects of all modern movements, was not their political, but their social operation.

It is not likely that any attempt will be made in our legislature to carry out an outrageous project such as the nationalization of the land of England would be, in any form according to which the expression is understood, all at once, or as one consistent scheme. In England, as elsewhere, though more decidedly in England, things develop themselves slowly. It is more likely, if any revolutionary projects of the kind are advanced in the way of proposed enactments, that the business will be done bit by bit, and in the first instance insidiously, and that the owners of property will be thrown off their guard. All that the wisest among them can do is to watch events, and to hold fast by principles ; of which the chiefest is, the essentialness to civilization of the absoluteness, and consequently of the completest liberty, of property, in land as in other products of labour.

The laws affecting the tenure of land and other real property are second in importance, if second, to the laws concerning its ownership. In England, common law has been superseded to a very great extent by

Tenures
and laws
respecting
them.

statute law in this department, not always in the interest of justice; and in Ireland it may be said that there is no common law at all, but that the whole of the relations between landlord and tenant, or more correctly between owner and hirer, are regulated by statute. There is one exception of importance to the above remark; the severity of the common law in respect of the right of distraint for rent, has been to some extent, though not enough, mitigated by modern enactments. Otherwise, there has been no service rendered to natural equity by our legislation, concerning the relations of owner and hirer. Had the enfranchisement of copyholders been left to Parliament, there would not be at this time a copyhold in existence. The right of distraint is a right which has descended to us from a time when the only commercial relation which farmers had was the payment of rent; there was, accordingly, nothing unjust in giving to the creditor a summary mode of enforcing his claim; but this becomes a preferential claim, and by consequence inequitable, when the debtor has other creditors besides the one. Statute law has limited the right of distraint, and it ought completely to abolish it. This is one of the few instances in which common law, amplified and declared by statute, is inadequate in its purposes; for it cannot from its nature extinguish a right which it has recognized, unless that right becomes obsolete; and in this case the right is such that it is impossible that it can expire of itself. The inequity of it is evident when the case of hiring land or a house is compared with the hiring of a chattel. If a man hires a piano at a pound a month, the owner of the piano has no claim upon anything more than the general estate of the hirer; and there is nothing in the nature of the bargain concerning land or a house to make it different from

the bargain concerning a chattel. The abolition of the right of distraint for rent—that is, the abolition of the priority of the landlord as a creditor—is necessary, not only in justice to other creditors in general of tenants, but also is necessary in order to establish in our law, and in the public opinion, a recognition that there is no essential difference in kind between the two descriptions of property, real and chattel. It is some assistance in understanding that the distinction made between them is entirely artificial, if we consider the operation of the new laws of limited partnership in this country. A landowner may sell his estate (and multitudes of such estates have been so sold) to a joint copartnership, of which he himself is a principal member; it may even be that the ownership is really only changed in form, for he may retain ninety-nine hundredths of the estate, and only associate men of straw with himself in the partnership; and the property becomes at once chattel, except in its relations with its tenants; making one of those absurdities which are both theoretically and in practice mischievous.

Other laws respecting tenures are of far more importance than the above; and in their case, there have descended to us traditions and provisions which were probably just when they originated, but, having become inapplicable to new circumstances, have ceased to be so; and in their working now, constantly cause not only disputes which are difficult to settle on the basis of the existing laws, but also disputes which would never have arisen had artificial statute law never interfered. It is necessary to recollect that our practice, and consequently our common and enacted law, have treated tenancies, since the expiration of the feudal period, as contracts; the exception being the copyholders, who had rights which were not matter of contract, but had

become positive by custom. Feudal tenancies were not contracts. The lord, who held from the crown, could not be ousted at the will of the crown; and the vassal likewise, who held from the lord, could not be ousted at his will. Many vassals subsided into copyholders; but new tenancies were constantly being created, which were not feudal, but tenancies for rent; and if for service in addition, when these tenancies were not of the old kind, but commercial, they were still, as when for rent alone, treated as contracts. The new social condition was finally established under the legislation in Henry VII., at which time the last active parts of feudalism, or the system of military tenure, disappeared. The circumstances were such that there was no other way for the law to regard all new tenants, or non-copyholders, otherwise than as hirers or contractors. Now, in a state of agriculture in which the growth of grain was the chief object, in which the keeping of cattle was no more than grazing, and in which there was nothing of the nature of those expensive outlays for the development of the land which are necessary now, lettings of land were always from year to year; and statute law, accordingly, so regarded them. But when new systems of farming were introduced, and one crop of grain was succeeded, not by grass or fallow, but by a crop of potatoes or turnips, which required much and careful labour, and manure, either made on the farm or imported—a crop which, after gathering in, had not exhausted the fertility of the land, but improved it—and when the usual rotation extended over four or five years, to regard every agricultural letting as a letting from year to year only became absurd, and nothing but the existence of statute law on the subject would ever have reconciled either the public or the courts of law to the absurdity. This absurdity became still greater

in degree when, in agricultural progress, it came to be necessary to drain with subsoil pipes a very large portion of all the land in the country; an operation not only expensive, and requiring considerable time to repay its outlay, but when done completely, not requiring in some soils to be renewed for nearly half a century. Had there been no enactments in our statute-book concerning these lettings, except such as declared the interpretations of customs and contracts as decided in the courts, there can be no doubt that agricultural lettings would have come long ago to be regarded as made under contracts applicable to the circumstances of the different classes of cases; that is, that in a country where the four-course rotation prevailed, lettings would have been understood, both in practice and in law, to be for four years or multiples of four years; and other things accordingly. In parts of the east of England, custom has actually superseded law: lettings are made specifically, generally for five years; and in the highly improved parts of Lincolnshire, it is universal that an outgoing tenant has the same property in the unexhausted manures in the soil, that the tenant of a dwelling-house in London has in the ordinary house-fixtures; and is entitled to their value, to be awarded by legal process in case of dissension, either from his successor in the farm or from the landlord. Belgium is a country which has reached for a long time back a high proficiency in the art of agriculture. In the flat parts of that country, where nearly all the land is held in rather small farms at very high rents, lettings are by custom and law for three years, renewable for two more periods of three years at the choice of the hirer; the basis of this arrangement being the ordinary rotation of crops, one in three requiring heavy manure.

In all the discussions which have taken place during

the last forty years respecting the relation between the owners and hirers of land, and the relations of both to the law, it has been almost universally taken for granted that there is something essential and necessary in yearly lettings, as if the payment of an annual rent does of course make the tenancy on which the rent depends really depend on the rent; this is as contrary to reason as it would be contrary to fact to suppose, that a soldier receiving a shilling a day for his wages is at liberty to leave his employment at a day's notice. All proposals for the amendment of the tenure laws have been for modifications of the present presumption of nothing but yearly tenancies; not for adopting presumptions founded on the facts and circumstances. A man who expends, as often occurs, ten pounds an acre on manure, the effects of which are to last through four or five years, and the cost of which may not be returned till the end of that time, enters on an understanding, tacit or expressed, with the owner of the land that he will be undisturbed in his occupancy during that time; and to be undisturbed means that he shall be considered as having made a bargain for the amount of his rent, to last during the term. In like manner, one who thoroughly drains his land, in a way which cannot repay itself at once, and in a way such that the benefit of the improvement will certainly continue for at least twenty years, constructs those works under the tacit understanding or equitable bargain that he shall be undisturbed till he shall have had time to recoup himself for his outlay. The tendency of agricultural progress is evidently towards the necessity of longer and longer terms of holding; and, as has been observed above, in some parts of England the force of custom has overridden the intentions of enactments, and terms of holding have been adopted suitable to the

cases. It was at one time very likely that the increasing necessity for treating all matters of contract purely in their mercantile and economical relations would have led to a general supersession of the present statute law respecting yearly lettings and their intent by the action of the parties themselves, in making agreements setting aside the ordinary statutory provisions ; leases, in fact, without their expense, and without the cumbrous and often impossible conditions which the pedantry, if not the malignancy, of lawyers has commonly imported into those instruments. It has unfortunately occurred, just at the time when general attention was directed to the subject of our tenure laws, that a curious and mischievous change came over the spirit of our legislation ; a change in the direction of regulation, and of creating instead of recognizing custom. The law respecting English agricultural tenancies passed in the present year is not based on unfair ideas of what is required, but it provides a machinery entirely artificial, and contains provisions which will be most likely found impracticable in their working, or at least most troublesome and interfering. The idea that underlies this and other like legislation is that hitherto the provisions of the statute law have been too favourable to the owner and too unfavourable to the hirer. A very true opinion, because the statute law has interpreted the contract of hiring, generally, in one way, and not according to what the contract really was, or would have been had there been no interfering statutes. To remedy this by more interference in contracts, instead of making contract perfectly free, is to cure the effects of poison by more poison. Many advocates of reform in our tenure laws are so devoted to legal interference, that they recommend prohibition of any contracts in land-letting which

are not based on the prescribed lines of the suggested new enactments ; viz. that no agreement shall be valid according to which the hirer is to give up his holding at the end of his term or lease without a right of being reimbursed for his permanent productive expenditure ; a prohibition which would put a stop at once to a most useful set of arrangements, "improvement leases," under which hundreds of thousands of acres have been brought from a waste into a cultivated state. In the act of 1883 there are some things which are almost unmeaning ; that, for instance, in which a certain tribunal is to judge of the value of land, what portion of that value consists of the improvements upon it, and what portion consists of its "latent capabilities." It is surprising that men of business and lawyers should consent to put into a solemn enactment language which no tribunal that ever existed could attach a tangible and definite meaning to ; or, if they did arrive at a definition of their own, the vagueness of the expression, and the consequent vagueness of the definition, would cause a varying sense to be attached to it from time to time. This whole law is an example of the inconsistencies and mischiefs into which men are led when they will not regard things entirely economical and mercantile as such. There has been of late an opinion prevalent, that given a landowner and a land-hirer, the hirer has a natural right of property in the permanent increase of value which his cultivation, fencing, draining, and so forth have imparted to the land ; and that, consequently, he or his successor has a right to be restored the whole amount of the outlay he has made on the land if he comes to quit it—either by sale to the man coming after him, or by payment from the owner if the latter enters into full possession of the improved land. This notion of natural right is un-

founded; for the right, when the land belongs to another man, in the nature of the case depends on the agreement or bargain, if there be any, or on the reasonable understanding, if there be none, with that other man. Whenever there was a bargain for the perpetual enjoyment of the interest in the land, and the perpetual right to property in the improvements, that bargain exists in undoubted and unquestionable form to the present time in the shape of a perpetuity lease; and where there was no such bargain there is no such lease. If the fact be otherwise, and the justice of the case otherwise, then every letting of land for farming purposes made in the time of the Tudors, and continued in various conditions till now, was a perpetual agreement in the first instance; and there is no difference, moral, commercial, or properly legal, between leaseholders and ordinary tenants; which notoriously is not the case. If any question can arise about this, it is settled at once by the commercial fact of the eagerness exhibited in all advancing conditions of society for leases of lands for ever or for long terms; and in the higher rents, either to be paid yearly or to be fined down, which such lettings command over the rents to be paid when the period is short or indefinite. Supposing the contrary the case, all right of property in land, except a quit-rent, is extinguished in any owner who is not also an industrial occupier; as though the right in property, or the accumulated product of former labour, is not the same in him who has saved it up, purchased, or inherited, as in him who has produced it with the labour of his own arms. The recent legislation on Irish tenures has been largely influenced by the fallacy here spoken of; while some provisions of the Land Act of 1881 have been not only thoroughly equitable, but most judicious. Treating every letting as for a term of

fifteen years, instead of for only one, is meeting the requirements of modern agriculture in the most reasonable and proper way; for if the necessary outlay in making land most productive cannot be returned to the person making the outlay in less than fifteen years, it is evident that that period should be the shortest for which lettings should be presumed to have been made. In some other respects that remarkable law travels far wide of that sound equity which has dictated the fifteen-year lease; notably in the presumption, not merely that the hirers have in all cases made those works which develop and increase the productiveness of the soil—a presumption which, in the circumstances of Ireland, is frequently reasonable—but also that those works and improvements never have devolved, and never can devolve, on the owner without direct contribution, act, or payment by him; thus setting aside the fact, that the vast majority of lettings, and all ordinary ones, never were intended by either party to be perpetuities. It is not possible permanently to keep separate from the land that which has been incorporated into it; the fixedness of land necessarily dictates that the fixtures upon it shall ultimately become a part of itself—a part of, or joined to, the freehold. Where an attempt has been made by agreement to keep them separate, as in the case of leases for ever, the effect has been that the actual and visible property in the land becomes the property of the lessee, subject to his rent, the owner subsiding into a mere charger or mortgagee; while, when no attempt has been made to keep the land and what is erected on it permanently separate, the owner remains owner, subject personally, and also in relation to his estate, to his contracts and conventions with his tenants. In Ireland those contracts, and especially the conventions, were but vague; and owing to the partial

operation of the statute law, which had never before the first Land Act of 1870 recognized them, and owing to the culpable negligence or blindness of the courts to the first maxims of the common law, opportunity had been given during many generations to landowners to traverse and even set aside the conventions, and to introduce regulations of their own, which had the effect often of transferring to themselves, before they had any equitable claim to it, part of the profit of the outlay of the hirers. This went on during the whole of the last half-century, more or less; and the process was aided by the profitable nature of agriculture itself, and by the demand for land, both to buy and hire. So far as the operation of the new law has proceeded, it has gone considerably beyond contributing a remedy for this, which was one of its purposes; for while it enforces, when required, the ancient and never obsolete convention under which the Irish farmers had a right to sell their interest in their holdings to approved successors—a convention so general that mere acknowledgment by law was all that was required to make it universal—it goes farther both in direction and in estimate of time than this. It is difficult to understand the exact working of the administration; but, as it can be deciphered, the assumption is being made, that in every case where it cannot be shown to the contrary, the owner has no property in the land beyond the land itself, and none in the results of the outlay upon it. The process of valuation by which the money results are arrived at does not clearly appear; it is evidently clumsy, and it is gravely complained that mere chance and guessing are largely admitted. The effect, if the system, which there is strong reason to believe was never intended to develop itself so extensively by the framers of the law, continues, must be to transfer the

practical ownership of a great part of the land of Ireland to a vast number of small proprietors, subject to the payment of defined rents, which will virtually become perpetual. Many persons believe with a very strong conviction that such a system of ownership is the best commercially and morally in every community; and when the well-being of those countries is considered, Switzerland, parts of France, and elsewhere, in which this peasant proprietorship prevails, there is every reason to regard it with favour. The establishment of it by mere legislation, however, and that legislation accompanied by some very serious and questionable things, is not reasonably to be expected to produce the same fruits, either commercial or moral, as the spontaneous growth of its like through the original circumstances, or through the accumulated products of the industry, of the population. The magnitude, in sums of money, of what is now proceeding in Ireland is not so great as is commonly supposed. The annual value of the real property of that country is certainly under twenty millions sterling; and the rents of the agricultural portion of that property may be estimated without much error at fifteen or sixteen millions, at the outside. Of this sum probably two-thirds, some say more, will be affected by the operations of the courts established under the act of 1881. The reductions which are made authoritatively by those courts in the amounts of rents payable, and the reductions which are being made in sympathy with their action, or indirectly compelled by their action, are or will be about one-fifth or one-sixth of the whole; or a reduction of the total rental of Ireland from fifteen millions to twelve or twelve and a half. There are at least half a million of farming tenancies in that country; and thus the effect of the working of the law will be to make every one of

the tenants better off by five pounds a year on the average. This is on the supposition that without the operation of the law no reduction would have occurred in the ordinary commercial course. It has been observed above that this kind of operation of the land law was not anticipated by those statesmen at whose instigation it was enacted ; indeed, there are their own sayings to that effect. But they were unreasonable in having any anticipations at all ; for the provisions of this most curious law were actually with purpose indefinite. It is evident, on referring to the Parliamentary debates of 1881, that the intention was to leave the definition of a " fair rent " to be arrived at by the tribunals ; and, as no rule was laid down, it is not surprising that a score or more of tribunals, consisting chiefly of men new to legal procedure, bound by no oath to administer justice, and subject from the terms of their appointment to be influenced in ways that judges never would be, should present in their decisions remarkable varieties of conclusions. In one point they all appear to have set at nought one principle, without which it is entirely impossible for judges or arbitrators to arrive at just awards ; they evidently, while for the most part remaining, unlike legally educated judges, quite silent as to the grounds of their awards, never take into account the strongest and very first evidence on what the fair rent is ; which is the amount of rent which the parties had agreed on without the intervention of a tribunal. It may be said with positiveness, that unless the price of an article is allowed to be fixed in free and open market by ordinary competition, no elements exist on which it is possible to found a judgment on what the price ought to be ; and this " ought to be " is not proper matter for a legal decision unless voluntarily submitted by both parties, or unless circumstances,

such as fraud or manifest extortion, necessitate an application to legal means in order to have the contract revised. But the act of 1881, in its application at least, whatever may have been its conception, sets aside not those contracts only for setting aside which reason is shown, but every contract without exception relating to agricultural lettings. The mere statement of the case is its condemnation on all jurisprudential, economical, and moral grounds; on moral grounds most of all, for it is a public teaching that a bargain is not binding because it is a bargain, but because means exist at law enforcing it. In another aspect the effect of this law is demoralizing, and very injurious. The tribunal which was erected in Ireland, under the influence of the late Sir Robert Peel, for enabling the titles of land to be simplified, when a property passed through it for sale, conveys the property to the buyer; having first given him, and the rest of the public, notice in public documents of the conditions of sale and particulars of the estate; the particulars setting forth the then rental, and the conditions being absolute and unquestionable possession subject to the contracts with the payers of the rent, on payment of the principal money. The new law of 1881 in effect takes away the right of property, leaving only a charge; and not in effect only, but undisguisedly, deals with the amount of the rental which the conveyance from the crown morally and in nearly so many words guaranteed while the payers chose to continue it. In those especial cases in which the land had passed on these terms within never remote and generally recent memory, there is here a manifest breach of public contract; for the conveyance by the crown is in law and in reason, of the nature of a gift, indefeasible and irrevocable. In these cases the violation of faith is plain; and in other cases it is no less real, because the title

granted by the court is only a model of what all titles ought to be, and the right in property is defined, not created, by that title. It is not possible at the present time to estimate what the sum of the results of the first phase of the administration of the recent act will be; there are, however, indications which do not point to favourable issues. The loss to the class most foremost socially of a fifth part of their gross incomes, not by natural causes, which can be fought against, but by handing over that revenue to another class of people, is in many instances, it is feared, crushing; in the case of those who have large annual charges on their estates, it will probably be found so, and many enforced sales will take place. Owing to the doubt prevalent as to the security of any property, buyers will, it is believed, hesitate to come forward; and with this discouraging circumstance, joined to the expectation of a large quantity of land being brought to market, there is reported to be a very general gloom over society in Ireland at this time. There is very little prospect of the class of hirers of land becoming purchasers; for they are looking forward, whether their anticipations are correct or not, to the operation of future legislation reducing their rents still more, and would not with that expectation think of purchasing on the basis of the present rents. Even were the assistance of the state called in, they would not come forward; and that assistance, if given generally, could not fail to be productive of an immense crop of mischiefs, social, financial, industrial, and political. Let it be supposed that there is no more legislation; that the operation of the present law proceeds, till two and a half or three millions sterling are annually saved to the class of land-hirers, at the cost of the owners—the owners having lost that control over the property which was till recently included

in the idea of ownership; it is easy to foresee some of the results. A large change will take place in the proprietary, personally; and there is not the slightest reason to expect that their successors will be better men, or as able as the present gentry to fill that social position which by natural tradition the owners of land are called on to occupy. For this is not a rooting out of decayed people, who disappear in obedience to the law of natural selection, as large numbers of the Irish aristocracy did in the period following the famine of 1846-1849; it is the selection, not of the fittest, but of the unfittest. It is no slight thing to destroy, in a country eminently deficient in civilization, and in which the instinct of social order is weak, one of the chiefest civilizing elements in it; and the advantages are not commensurate, if anything. The good parts of the recent legislation, the fifteen years' provision, and the authorization of the conventions between owners and hirers of land respecting the saleability of the interest of the latter, will without doubt produce good effects; and perhaps, in the undistinguishing judgment of many, the good effects of those provisions will be ascribed to other parts of the act. It may appear a good thing to make every small farmer in Ireland richer by five pounds a year, or one hundred pounds of capital. It is not a good thing; the money is not earned, and not honestly come by. It is said that already many of that class are feeling this; and a curious practical result has affected them. When a man wants to sell his interest in his farm, the disturbance of the idea of property is such that there is no one to buy it; for people generally expect a further revolutionary law, lowering rents more, and they think that a man buying a farm now would be shutting himself out from such benefits as he might acquire in future.

It has been said by Mr. Bright, and the observation is probably not made for the first time by him, that the weight of the political power in a community generally resides with the owners of land. This is so far true, that it is difficult for the government of any country to act in any way persistently contrary to the interests and opinions of the landowners; and it is further true, in that when political influence and possession of land are separated, no constitution can be strong, and changes with or without violence must tend towards the increase of the power of the proprietary, if it be left any at all. The limits to this are in the wealth of the other classes of the community; as in Holland during the seventeenth and eighteenth centuries, where the aristocracy, which was at the head of the affairs of that state, was commercial and not territorial. It does not appear that the numerousness or the reverse of the landed class has much to do with the amount of power in the state which it exercises; for when they are few, and their estates large, there is a large number of persons dependent on them commercially and socially, which goes with them as a political force; and the power of combination, and the strength derived from following by calculation a set of matured political traditions, are greater in a small than in a large class. The strongest governments, using the word in its higher meaning (not merely the most powerful administrations), which have existed are the Roman republic for a century before and a century after the Hannibalian war, and the government of England since the accession of the present House; both of these have been chiefly based upon the political and social power residing mainly in landed aristocracies. The strongest governments at this moment existing, leaving out this country, are those of Switzerland and

The political power attached to the possession of land.

of the United States, both of which are chiefly founded on yeomanries. Of other civilized states in Europe, the only one which can possibly be regarded as a really strong government, both internally and externally; is that of Germany; and that, never yet having been subjected to a trial, is only potentially strong, and may be subject to influences of a disintegrating kind which we know not of yet. The balance of power in England has materially shifted within a century; the increase of the proportion of wealth outside of the landed class has been great; and the increase of the power of the mercantile classes, the owners of that wealth, has also been great, but not in proportion to their wealth. Opinions may be, and are, divided as to the real strength of the commonwealth of England at this period, compared with what it was during the Napoleonic war and before it. While some think that the changes under which society has passed have not added to its strength and health, others believe that, if occasion arose, this country would not be behind the England of the Pitts, father and son, in the exertions it could and would put forth. It is difficult to tell what are the real moral changes made in a national community by circumstances and institutions; always excepting conquest, which introduces new, and more or less healthy, elements of life. Those who hold that the institutions being the creation of the community, must influence it less than it influences them, are probably nearest to a correct opinion of the reality; while an increase of commercial wealth, and a diminution of the power of the landed classes, is conceivably likely to detract from political permanence and stability, those qualities being in men's minds, and, in fact, associated with land. In respect of its internal strength, at no former period of its history was England more vigorous than it has

been for the last half-century ; and there is not yet any reason to suppose that the doctrines respecting property, which, if carried into effect, would undermine society and morals, have attained such general acceptance as to make them actual factors in politics. There are other political symptoms, unconnected with these considerations, which may be, without doubt, interpreted as displaying a decline of moral strength in public men generally ; and there are many persons whose political opinions and principles differ in almost all other matters, who are agreed in thinking that the number of men who are placed in high positions, chiefly as members of Parliament, for no reason except that they are wealthy, is a political sign doubtful of good. In the last century, when the landed class preponderated in all things, both in the amount of its wealth and of its power, it never occurred to the public generally that to choose a man for a member of Parliament only because he was the owner of ten thousand acres was absurd. Such a man was felt to represent a class ; but the owner of ten thousand a year in the funds does not as such represent any class. Considerations of this kind, all which are based on the main consideration of the necessary and natural importance of the possession of land, enable us to enter into the spirit of the expression of Mr. Bright, and enable us to understand how a man who holds the opinions, which he has always with eloquence and power advocated, respecting free trade, is induced to set aside the carrying out of those principles in relation to the trade in land, in order to encourage and almost compel its subdivision into small estates, the owners of which he probably expects to be more favourable to his other political views than are the present larger landowners.

It is not necessary nor unavoidable that political

power shall always and at all times be associated with the possession of land ; what is always the case is, that when it is so associated, the result is a strong state of the commonwealth ; and such an association may be concluded to be the most natural and healthy union that can prevail in the state. But when such a union does not prevail, and when the owners of land are mere units in a democracy or under a tyranny, there is no class more subject to public robbery in the event of revolution, and none more timid in defending their property in the incipient stages of revolution. This is forcibly set forth by Burke in the "Reflections," where he speaks of the necessity of property being represented in the state "out of all proportion ;" a view which probably appears extravagant now, but which is founded on that held by Mr. Bright, and the application of which is a matter of degree and of expedience. When the ownership of land is so general, that the owners of it form themselves the community, as to a great extent is the case in France, in the United States, in Switzerland, and in some other countries, the materials for a revolution cannot exist ; the only real revolutions being those in which a change takes place in the possession of property ; and in such countries none can occur, except what comes in the form of foreign conquest. It is the same nearly in a country such as England, where properties are large, and where the landed class is also the governing class ; but if all political power be taken from the landed class, either by the growth of democracy or by the growth of tyranny, their property will become, sooner or later, the object of robbery ; and whether that robbery be effected by violence, as was done in France in the great revolution, or by legal forms, as some men in England contemplate now, it is equally robbery ; and from the

moral causes which operate on the affairs of men, overriding their actions and the often expected effects of their actions, the result on a community of such a revolution cannot be the advancement of its moral vigour. In a former part of this treatise, the probable economic effects of a transference of the mass of the land of England to other than the present owners were spoken of; and it must be evident that, if such should be the effects, the physical strength of the commonwealth would be materially diminished; over and above which, and independent of any merely physical results, the moral results of an immoral transaction must be bad. In the following part of this treatise, the means will be spoken of how this commonwealth is to be best preserved in that living progressive condition of order upon which it entered four hundred years ago; which condition has advanced, though not without pauses and temporary retrocessions, until now, and is at this moment advancing; which can never attain perfection, because perfection is infinite in its nature, and the worldly things of men are not capable of it; but which will, in all reasonable hope if not in certainty, go forward in its advance, aiming at that perfection which it cannot reach; while if it be overturned, such progress is to be looked for only with that vague and misty hope that gives promises to pay at distant dates, instead of drawing upon the solid bank of the past.

If the fruit of a man's labour be his, according to the laws of nature and by the gift of God; and if the accumulated fruits of labour, according to the sequences of those laws and according to the intents of that gift,

Rights of
particular
societies in
property.

be the property of their actual possessors, by devolution, by prescription, and by the recognition of the society; and if this be in general true of all property; it is true not only of that belonging to individuals, but is also true of that belonging to individuals when associated together. Our laws, and the laws of all other civilized countries, know no difference in the rights of property held by persons and by co-partnerships; and, generally, no difference in the rights of persons and of societies. If the object for which persons associate together be lawful, there is no reason why there should be a difference in the rights of the association from those of one person. Two men unite their stocks in trade for the purpose of trading; their estate becomes then, naturally and before the law and in the eye of society, a joint estate. Two thousand men do the same; and the society recognizes their union, the right to make which, it is to be remembered, is a natural right, recognized but not created by legislation. What the society rightly interferes in with respect to such associations is, not the existence of the association, but its authority over its members, and the definition of its status towards the other members of the community. The law should not permit a trading corporation to usurp on the private rights of its members, nor should it enforce its rules on them, unless those rules be reasonable in themselves and matter of contract. Ever since the enactment of the acts of 1856 and 1862 respecting private joint-stock companies, this has been the practice in England; and before those acts were passed, it was the practice likewise, with, however, the practical difficulty and limitation, that until then the companies required a special charter or licence to enable them to exercise their functions; while since then the power of association is universal.

In like manner it is open to any number of men to unite together for any lawful purpose, in a form more or less permanent; and it often happens that, when this is done, the state grants incorporate powers to these societies, when it appears to the advisers of the crown that such will be useful to the public interest. The Royal Society, the College of Surgeons, the Academy of Arts, multitudes of corporations for conducting hospitals, are so incorporated; the difference between their position before and after the incorporation being, that not only the moral sanction of the society in general is given to them, with binding authority to legislate for themselves, but also that the corporations are entitled to hold property as though they were persons, which previously they could do only through the means of delegates or trustees. In this practice of incorporation is to be discerned a relic of that time when royal or state licences were given for many things which by natural right men may do without licence—trade, for instance, in foreign countries. There is also to be discerned in the practice this: that the state is not the author of the societies incorporated; they do not derive their existence from the act of the state; they derive recognition only. At this moment, the British Association for the Advancement of Science has as real an existence as the Royal Society of Charles II.'s foundation, and a much more vigorous vitality; and yet, before the law, the former has no existence at all. It is very likely that in this individual case no serious inconvenience or mischief has ever arisen from the non-recognition of that eminent association; but when it is considered that the right of association for proper purposes is as natural a right as that of the individual man to discharge those purposes by himself, there is no reason for, and there are reasons against,

the action of the state in making not a natural but an artificial selection of the unions of persons which it will recognize and endow with privileges. Such recognition and privilege carry with them often what is equivalent to monopoly. The Royal Academy was instituted for the encouragement of art; there is not a particle of historical proof that it ever has encouraged art. The improvement of the public taste in art which in common consent has taken place since the beginning of this century has been spontaneous, and is not the result of the patronage of the state. Art is a form of labour, subject in its development to the same economic laws as other forms of labour. Supposing that there was no institution in this country of the kind, and that the law of natural selection had free play; and that there was no yearly show of pictures and statues, every one of which, if intended to be sold, has its market value materially increased by receiving in the fact of its exhibition a certain stamp or hall-mark, whether it be real plate or only washed pewter; it is more than probable, it is almost certain, that we would have many galleries of pictures exhibited to the public for one that we have now. It may not be said with certainty that, with the quantity augmented, the quality would be improved; but it may be said with certainty that the quality would not deteriorate; and artists would have fair play under a fair and natural system of competition. This is but one instance; and wherever there is monopoly or "protection," mischief may be presumed, which requires only examination to be discovered. It would be reasonable that any union of men for any lawful object, on signifying to the public by registration, its existence, its members and officers, and the terms or rules of its union, should by so doing acquire a corporate existence; all that the state should

have to do with the matter being to see that the purpose of the union is not contrary to the good of the commonwealth, that its terms are not contrary to the private rights of the members, and that the public shall know it by name and residence, as they know their fellow-citizens.

In the event of societies, unions, or corporations becoming possessed of property, in land or goods, that property is, of course, the property of the members indirectly ; and the members, in their capacity as such, and through their union, have the same rights, natural, acquired, and prescriptive, in that property as they have to their own personal estates. If the property of the union, corporation, or club has come originally from the donations of the members, the above is self-evident ; and it is none the less true, if it be the proceeds of the gifts of outside persons not members, as often occurs in the case of charitable foundations ; and none the less true, if it be derived from public or royal grant. This is recognized in our legal polity even more completely in the case of voluntary and non-incorporated societies than in the case of those whose existence the law recognizes ; for the former, if they have property, place it with trustees for its uses, who before the law own it as if it were their own ; and can be put under no question as to their title, but can be called to account only for their administration, and that only by one who can show that he has an interest which has suffered through their default ; when, if they can establish that they have acted in *bonâ fide*, our courts will not deal with them punctiliously for a minor lapse or trespass. Whereas if a corporation, in the full legal meaning of the word, is brought before the Court of Chancery, a very easy thing to be done by almost any one, any excess of its power or jurisdiction, any misappropriation of funds,

any default at all, is searched into almost with animosity, and the wrong often visited with practical money mulcts not on the corporation only, but on the corporators themselves; the prejudice of the public, and, where there is an animus, the animus of the court, being almost always against such respondents. It may be a kind of retributive compensation, that societies which have exceptional privileges over others should be subject to exceptional severity if they offend; if it be so, it is a reason against such exceptional privileges being created; it is not for justice that it should be so. Various instances have occurred wherein hardship has been endured by individuals, who acted in good faith and for the public advantage in excess of their authority as members of such bodies.

If it be right that such facility as spoken of should be afforded to all proper unions of men, for self-incorporation, and if the right of property in such unions or societies is not analogous to the personal right of property, but is the same right, this extends to all societies whether for secular or spiritual objects. This is so evident with respect to the various religious and educational foundations of the different Dissenting communities, that no illustration is required—the mere statement is sufficient; and it ought to be equally evident with respect to the Established Church of England, and would be, but for a popular misconception, or perhaps for several popular misconceptions. One, and perhaps the chief part of that misconception is, that a corporation, being a trustee, holds its property in trust for the purposes for which it has been instituted; and that the Church of England, though not a corporation in the legal meaning of that word, is virtually such as being a society; and therefore that Church property is really property committed by the

state to the Church, upon, or to carry out, certain trusts and purposes. It is true that the Church is a society, and as such competent by natural right to possess property; and, according to law, competent to possess it in its own name, if recognized in its whole or in its parts as having a corporate existence, or as being a sum of corporate existences; but it is not correct that it derives or has derived its existence as a society from the state, any more than any of the various religious bodies in England, or at all. Church property is not in its origin national property; it has never become national property, or the property of the nation (or state), by any act of either the Church or its representatives; it has never been assumed by any act or declaration of law as being the property of the state. The state has, and has always had, a control over it, different from the control which is exercised over private property; but this control is not possession, and does not presume possession, or the possibility of it; it is a control which arises from the fact of the establishment of the Church and from the conventions which naturally and necessarily followed in consequence of its establishment. The permission which the laws give to the Church to enjoy its property is not different from the permission or sanction to enjoy his property which pertains to every man, and to every association of men who unite for a lawful purpose. Supposing that a part of the estates of the Church, or of ecclesiastical corporations, was granted by former kings or governments; it makes no difference in the property right. A gift becomes the possession absolutely of the donee, unless there is a power of revocation taken. Blenheim Park was given by the nation to the first Duke of Marlborough; to take it from the seventh Duke of Marlborough would be robbery. The maxim that

what the state has granted the state may resume, is more than fallacious; it is false. It is only recently that this false maxim has been put forward; none of the transactions under the Long Parliament and under Cromwell's administration even hinted at it. The Presbyterians of the seventeenth century, and their more extreme successors, the Independents, desired to reform the Church; not to overturn, nor to despoil it. This doctrine of the power of resumption existing indefeasibly in the state is a speculation, having no countenance in any legal act or in any legal language whatever. When the Irish Church Act was passed, no doubt the doctrine was very freely put forward in debate, but it found no expression in the enactment; which it is to be observed did two separate things: it dissolved the hitherto subsisting union between the state and the Church of Ireland, and it dissolved the various ecclesiastical corporations in that country, confiscating their property to a commission. It avoided, and studiously avoided, taking property from its owners; for it first provided that there should be no owners; and on this ground Mr. Gladstone distinctly denounced as inapplicable the term confiscation, as describing the dealing by the act with that property. It is also to be observed, that the two separate things which were done by the Irish Church Act were also unconnected with each other, except arbitrarily; for the dissolution of the union between the state and the Church might have been effected without making a disposition of Church property different from the old disposition. In the sense in which Mr. Gladstone used, or objected to the use of, the term confiscation, there was none in the case of the Irish Church estates; and accordingly there never was, in the proceedings of the Parliament of England at any time whatever, any con-

fiscation of Church property. For the transactions under Henry VIII., when the religious houses were suppressed, were not dealings with the property of the Church; they were dealings with corporations connected with the Church, but not the Church itself, nor a part of it, though they were no doubt a part of its then polity. Admitting, however, that the foundations whose property was confiscated—for to those transactions of the abbey lands and great tithes the expression is unquestionably properly applied—were part of the Church, and that there is, therefore, a precedent before the Irish Church Act for the assumption by the state of Church property, the precedent is not morally valid. The abbays were dissolved as societies, and their like prohibited in future, because their continued existence was contrary to the good order of the commonwealth; for the same reason that, if the colleges of Cambridge and Girton ever become, in that process of corruption from which no human institution can be certain of exemption, centres of wickedness and vice, and common nuisances, they will be, it is to be hoped, suppressed; and for the same reason that some day the Americans will suppress Mr. Young's harem in Utah. There is no similarity between the confiscation of the abbey lands, the property of societies whose existence was a mischief, and the dissolution of the union between Church and state; a dissolution which, if it is effected, will be effected in no case without the assistance of a large moiety of members of the Church itself; and not because the Church is an evil, but because it is desired to make it more capable of doing good.

Supposing that it should be resolved that the greatest municipal corporation in England, that of the city of London, has by decay ceased to discharge those duties which it received its charters to enable it to

perform ; and that therefore it should be dissolved and suppressed, and with it its associated minor corporations of grocers, fishmongers, and others ; if it were proposed that the great estates of those bodies should be vested in the crown, even if the crown at the same time took on itself the cost of the police and what pertains else thereto of the city, there would be a great outcry at the injustice of taking the property of one part of her Majesty's subjects and dispersing it among the whole. It does not require to be pointed out that the right of Parliament (using "right" in its proper moral sense) to reform the corporation of London so as to make it more efficient, and a more powerful agent in advancing the civilization of London, is an entirely different thing from an exercise by Parliament of its power to assume the corporate estates to the state. In like manner, the reformation of the Church of England under the Acts of Supremacy and the other acts of Henry and Elizabeth ; the further changes at the Restoration ; the establishment of the Ecclesiastical Commission by Sir Robert Peel ; the Public Worship Act of our own time ; and such further regulating legislation as may be adopted to increase the efficiency of the ministers, and the authority of the members, and to improve the procedure of the tribunals, of the Church, are things of one category ; to which category will also belong, if such ever happens, the alteration of the relations between Church and state by the exclusion of the bishops from the House of Lords, the abolition of lay and crown patronage, and the delegation to some voluntary representative body yet to be created, of the general administration of Church affairs ; as usually expressed in one word (not found in our dictionaries), disestablishment. While the assumption to the state of property that never belonged to it, that does not

belong to it under any conceivable circumstances, or under any legal aspect; which does belong to a society, the greatest and most beneficent to the whole society that ever existed, without whose existence, and without whose great and all-pervading influence, unless replaced by some better institution, which all man's wit and ingenuity would find hard to do, laws might be strong, but morals must decay; and with the proceeds of the assumption, after compensating those who would be deprived of their incomes, to pave the streets, to light the lamps, to build museums, to endow secular schools and colleges, of which we have too many already, or to found a fund to reduce the public debt; this is a proceeding totally diverse from and having no connection with the possible separation of Church and state, except such connection as may arise from the two transactions being given sanction in one Act of Parliament; a proceeding diverse in its nature, diverse in its intention, diverse in its moral meaning, and certainly diverse in its necessary moral effects. If these two things are ever done together, seeing that the effect of public measures is always largely modified by the spirit in which those measures are entered on, it is not the separation of the Church from the state, but the secularization of the property, which will be the actually influential part of the proceeding. The former can never be drawn into a precedent, except in the minor instance of the Church of Scotland, should that establishment not be attacked before the fall of that of England; but no attack can be made upon property which will not in all probability be drawn into precedent for something more or less like. Corporate property is more vulnerable than private, because its conditions, not because its titles, are different; and because there is none of that natural sympathy with a

body without soul that there is with a fellow-creature. Those who make the assault on the former deny the analogy, many of them in sincerity; but though they will not make their action a precedent to be followed, they cannot answer for others their successors.

We are not without an example—a minute and circumstantial one. It was a strong position with many, and the consideration did certainly operate conclusively with some, that the exceptional circumstances and position of the Irish Church would prevent its separation from the state from being drawn into precedent to be applied in Great Britain. If we regard the political opinions of great numbers of those who were most eager in the matter, it is surprising that men with any foresight should have been deceived as to this; and if we regard the subsequent action of the party of the Liberation Society, the censuses of Church attendance, made for the object of getting up a case, the proceedings in Scotland, and other things, nothing can be plainer than that the disclaimers which were made of enmity to the English establishment were perfectly hollow. There is something more than this, more subtle if not more serious. While the appropriation to the community of the Church property of Ireland was undertaken for political reasons, it was not unforeseen that this attack on corporate property would be followed by one on private property. The first was justified on public grounds; the landowners of Ireland, who now see one-fifth of their gross, in many cases more than one-half of their net, incomes taken from them and given to others, are being told that a part must suffer for the good of the whole. The Irish Protestants are said to have been very successful in administering the affairs of their Church; and it is observed on this, that to lose their property has done them very little if any

harm ; thus taking credit to the wrong for the efforts of the wronged to overcome the mischief. The land-owners are gravely told that they would have been in a worse position than they are unless the act of 1881 had been passed ; and that they have now incomes, lower nominally than their old ones, but sure of being paid. Those who say these things must be either very blind and bigoted, or very malignant, as men often are, against those whom they have injured. What has occurred in that country, if copied in England in part, will be copied in whole ; it is hardly of the nature of a prediction to say so. The analogy between one set of properties and another is so evident, notwithstanding the endeavours to magnify the differences, that topics for recommending special legislation for land, nationalization, resumption of unearned increment, and so forth, will not be wanting. Corporate property is held in trust, so is all landed property ; it is impossible for a corporation to have an interest in its estate beyond the lives of the existing members ; therefore the reversion belongs to the public. Similarly, a man's natural heir has no interest till the father dies ; " Come, let us kill him, and the inheritance shall be ours." It has not come to this yet, but it is on the way.

If the seizure threatened takes place, the method pursued in the instance of the Irish Church will probably be followed ; it is difficult to see what other course could be adopted, but that of suppressing the ecclesiastical corporations, and assuming their estates to be public. It is taken for granted that any property of this kind, perhaps that any property of any kind, that has no owner, is by the fact of having no owner the natural and rightful property of the society which has control over it. It may be inquired, How is such right derived ? Generally, the man who finds anything

that is unclaimed, may appropriate it; this was the origin of a great deal of property, to which the title is universally accepted as good. If that which is unclaimed belongs to the state, such right is an artificial convention, like that which conferred treasure-trove on the crown. Natural equity would dictate an inquiry into the true ownership; and, failing the discovery, would award the goods discovered to the finder. Policy would do the same, and morality would do the same; policy, because to seize treasure-trove is a discouragement against seeking it; and morals, because the confiscation of it prompts concealment and fraud. According to this, if it be declared that the well-being of the commonwealth demands the extinction of those corporations under which the great Christian society of England finds its expression and its life, and that in consequence their property must become stray and without a visible owner, natural equity would require its restoration, or rather its donation, to those who could show the best claim; and none could show a better claim to the great body of it than the landowners from whom the rent called tithe is levied; probably none others could show a claim at all. The cathedral corporations hold most of their estates originally by gift; and the origin of those gifts is almost impossible to trace. It is revolting to common reason that the landowners of the present time, though they are, if any persons are, the representatives of the landowners of Saxon England, should be awarded the smallest fraction of the property seeking an owner; therefore the question must be, For what purpose was the property placed under the trusts and in the hands from which it is purposed to take it? The answer must be, that those gifts were made to the Christian society for the advancement of that society's purposes; a society to suppress which, although its

legal expression may be extinguished, exceeds the power, as it exceeds the right, of any state or any possible aggregation of states. At the risk of repetition, let it be repeated—the Church property of England never was national or public property, and never can become so, unless the laws so making it contain an assertion of a double falsehood. One falsehood is, that the Church ceases to exist, or to possess its social rights, by the cessation of the recognition by the state of the separate existences of certain essential parts of the Church; the other falsehood is, that after the technical declaration of the first falsehood, the property made stray (and not become unclaimed, for the true claimant is there, never to be exorcised by any act of power) becomes of course, by natural right, or by prescriptive right, the state's.

It becomes the state's, neither by natural right, as shown above, nor by prescriptive right, or usage, or precedent; excepting the artificial precedent of the Irish Church Act, which in its original drafting and preamble declared by inference that it introduced an unknown innovation. That preamble sought to enact, that the secularized property should not be devoted to the forwarding of any purpose of religion; that is, that property diverted from the uses to which its donors had intended it to be applied, should be employed for any whatever except those uses. When, in the Plantagenet times, the estates of rebel lords were forfeited, they were forfeited not absolutely to the crown, but to the use of the crown to found new lordships, and were in almost every case regranted to kinsmen of the rebels. When the Parliament of 1529 suppressed the minor abbeys, and their estates came to be at the disposal of the king, Henry and Cranmer intended not to dispose of them as they afterwards were disposed of, but

intended to found all over England a system of public schools, and to increase the episcopate; and the same was projected with the proceeds of the greater abbeys' estates; and part of it was carried out, both under Henry and Edward VI. It was in opposition to the plan of the confiscation that so great a part, in fact the major part, of the abbey lands got into the possession of the new nobility; first, crown favourites were appointed stewards, then they came to be tenants, and, in the weakness approaching to anarchy of the Protectorate and of Northumberland's government, they grew to be actual proprietors. The confiscated lands never were assumed as absolute state property, and were never meant so to be assumed. There is one transaction in the old history of England which, had success attended it, might have been drawn into a precedent for strengthening the state by the seizure of property that did not belong to it. The *Parliamentum Indoctum* of Henry IV. proposed to suppress a number of the greater abbeys, and with the forfeited estates found a number of earldoms and baronies, the tenants of which were to add to the security of the House of Lancaster. That house, both in the revolution which placed it in power, and all through the wars with York, was the head of the baronial party, as opposed to the popular and municipal party; so that the proposal was to take the abbey lands for the benefit of themselves. The Churchmen disarmed their enemies by agreeing to an enormous partial tax. There is a great similarity between this and what is projected now; beyond this, what is projected now is new to the course of English proceeding.

The twenty years between the meeting of the Long Parliament and its final dissolution witnessed great changes in England; old institutions were remodelled,

and new ones set up; then the new ones were cast down, and the remodelling of many of the old ones done away, and something like the old restored. Through all this, very little of the change, either the changes forward or those back, was truly fundamental; very little property changed hands, no class of men as such was permanently despoiled, the Church was rather reformed than overthrown, though its constitution was so roughly dealt with; the monarchy was imitated, and only set aside in name. There was nothing sordid about Cromwell's government; the England of his time was substantially the same as the England of Burghley and Raleigh, the same as the England of Chatham, the same as the England of Peel and Palmerston. There is a set of ideas, and a spirit, prevalent now, the like of which were not prevalent, and were unknown, formerly. There have been various political contests in England about taxation, at one time about the power of it, where it resided; at another time, more recent, about the mode of it, and how it should be imposed. All these contests have involved principles, and men did not dispute about the money on account of its amount or on account of its worth as money merely; in those contests there was nothing mean. If the property of the ecclesiastical society of England is attacked, and it is sought to assume it to the use of the political society, the money consideration is one that will be made large account of. It is said that our Church revenues amount to six millions sterling per annum, equal to two hundred millions of capital. This is a great sum; its very greatness is such as to strike the imagination of the vulgar, and make them think there can be nothing base or mean in stealing such a vast total of property. The advocates of the separation of Church and state, who advocate it on the grounds which most of the

Liberationists stand on, have not yet made this one of their prominent points; but they will have to do so, for without it they can never be sure of the concurrence of the lower classes, who are positive gainers at present by the establishment of the Church. And they are ready to make use of this inducement, this bribe, at any moment. There is an association called the Society for the Promotion of Permanent and Universal Peace, the members of which are very nearly the same as those of the Liberation Society; at all events, the ideas of the two sets, if there are two sets, of men run very close and parallel. One of the chief arguments which the Peace Society men put forward in recommending peace is that it costs a great deal of money to make war; and one of the chief objections the Liberationists make to the Established Church is that its dignitaries have very large incomes. These are mean considerations to found a great policy upon; and, from being mean, they are not far from being immoral. The former implies that a war is unobjectionable if it could be made to pay as an investment; the latter that a man being rich is a reason for robbing him. The whole sentiment is nothing but Jacobinical, and new in English politics, and degrading to it.

[“Jacobinism is the revolt of the enterprising talents of a country against its property;” and the revolt is not of necessity confined to the talents.]

Should the separation of the Church from the state be effected, not for such reasons as the above; not to gratify the malice of atheists, the principled enmity of papists, and the selfish jealousy of political Dissenters; and not to save statesmen the trouble of legislating for the Church’s good, when they would prefer to be occupied with regulating secular affairs, which perhaps

they understand better; but in the spirit of reformation, and with the hope that Church liberty (as it is called) will be good for Church development and for the advancement of Christian civilization; those who believe that the order under which England has thriven for four centuries is the proper order to pursue for four centuries more, and that the commonwealth will travel more unsteadily if it is shunted on to a narrower gauge, will have much to lament and much to fear; but what they will lament is not sin, and what they will fear is not ruin. They will have to lament that those true principles of freedom which began to spread in the time of the greatest power of the popes, and in hostility to them, and which gained a noted victory at the Reformation, and have continued to enlarge their dominion from generation to generation till now, when they have almost, if not quite, reached as high a pitch of development as human imperfection admits of, are not denied so much as ignored and superseded by others, doubtful in history and in logic. They will have to fear, with the loss of the essential Ghibellinism of the Church which it must lose with its established position, a loss, too, of much of that true catholicity by which it is distinguished above all other Churches on the earth.

But if the separation of Church and state shall come to be brought about by revilings, by threats, by appeals to irreligion, by appeals to jealousy, by bribes to the lower classes of cheap tea and tobacco; and if it be accompanied by spoliation; there is before us, the stench of its smoke already perceptible, the bottomless pit of Jacobinism; and the fear of reasonable men then will be that England will be England no longer.

The constitution of the supreme authority in the state.

The division into the three departments—administrative, judicial, and legislative—of the functions of the state is a division not necessary or primary, but one of development; and the relations between the departments are matter of development. When, under the traditions of the society, or under the constitutions or conventions which the society has adopted in a form more concrete than tradition, the legislative authority comes to be vested in one body, it is evident that that body must become the supreme power, overruling all the rest. For that body which can by exertion of its authority regulate the proceedings of other departments than its own, is in its position visibly above them. It is superfluous to suppose the case of absolute legislative power being vested in one person; such a vesting is practically impossible. There cannot be a monarchy so absolute as to be competent to set aside anything which subjects have really embodied into their habit and being as a community; while a legislative body which is also representative—and such a body is not to be conceived which shall not be in a very considerable degree representative, whether nominally so or not—has practically the power within the limits of nature of modifying and regulating all concerns and conditions of the society which come before it. The judges under the Stuarts, who held the highest prerogative notions, and who supported the royal liberty to disregard all statutes under Charles I., and to set aside some statutes under Charles II., stopped there; they held the king incompetent to set aside common law, for under it and by it the monarchy existed. Lewis XIV. could not impose a land tax. The Sultan of Turkey cannot go against the Koran. But the Parliament of England could and can do anything within human competence. When Lewis XIV.'s second successor assembled the

states, his and their joint authority became absolute; and if the sultan called a Parliament, as was once attempted, which would be really and truly representative, it would be impossible to limit the power so created.

It happens, however, in most civilized states, that this supreme (supreme is a better and more defining term than absolute) authority is diffused, and not concentrated. The common idea that the custom of modern Europe, of employing election in choosing legislators, while in ancient republics election was used in choosing officers, makes a distinctive and essential difference between ancient and modern politics, is erroneous. In Switzerland there is a certain class of questions which must be laid before the whole members of the commonwealth, nearer to half than a quarter of a million in number, for their vote before action can be taken; a practice much more resembling the voting of the Roman tribes than anything in either mediæval or modern systems which act by delegation. In other sets of questions, the Swiss constitution does not employ a different mode from the more usual. Here, therefore, evidently supreme authority is not concentrated. In the United States it is not either. The two houses are practically liable to have their enactments agreed to forbidden by the president; as in England the queen has the same prerogative theoretically; and president and congress together are liable to have their legislation revised by the supreme court, and ignored if decided to be contrary to the constitution. In England, there is nothing that Parliament cannot theoretically do; but Parliament is not a simple body; and the elected branch of Parliament is not elected in a simple manner or on a simple franchise; besides which, tradition and habit have so worked, that there are multitudes of

things which Parliament is as incapable of doing as if it could not do them ; for instance, make the judges go in and out with the administration. That assembly, which more than all others is supreme in its state, limited theoretically by another assembly which cowers under it, limited practically hardly at all, even in that subtle way which arises from the electing bodies being varied in their nature, is that of France.

The founders of the constitution of the United States showed great originality, as well as great foresight and statesmanship, in the creation of the supreme court ; the veneration towards which, amongst Americans of all parties and states, is like a bright expanse of blue in their not unclouded political sky. Its purpose was double ; it was to provide an authority, and a centre of veneration, which should be more influential morally than merely legally, and in which no one of the thirteen states should have a part in its capacity as a state ; a something, power over which they renounced for themselves and their posterity, to be more permanent than their changing legislatures. The supreme court was also designed to be a check on the apprehended precipitate action of the rising and growing democracy of America. It may be said, with hardly any limitation, that no artificial human product of the kind ever more unexceptionably and more beneficially fulfilled its functions than it has done during nearly a century ; chiefly directly in being a bond of union and a centre of veneration for the several states ; in a less degree, and rather as a moral influence than as a power, in its action on the course of political events and democratical development.

If the principal and worthiest object of political veneration in the United States is the supreme court ; and if the only object of veneration, because the only

depository of power, in France, is the assembly ; nothing more is required to indicate that the American republic, and the French republic, are states with very nearly nothing in the spirit of their political life in common. Different—in form much, in spirit vastly—as they are, in their present conditions, they are as different in the circumstances of their births ; and will probably be equally different in the circumstances of their histories and development in the future.

The history of the American revolution, or more properly the history of England and America during the years between the first peace and the second peace of Paris, has never been written. We have two American lives of Washington, containing only at the very best one-half of the story ; three or four English annalists, or scarcely more, of whom Lord Stanhope stands the highest ; the interesting disquisitions of Macaulay on Chatham, acute but unsatisfying ; and Bancroft, bating his lengthy moralizings, and his propensity, in which he imitates the great Italian historians, to impute motives too freely to public men, the best of all, but very incomplete. The real history has yet to be written ; and there never was a time when, if executed properly, it would be more valuable than now ; for it would appear that the public opinion of England has during one hundred years actually remained stagnant concerning the relations between the metropolis and the colonies ; regarding all questions as settled with the question of taxes ; while new ones, and perhaps as momentous, are demanding solution. In its inception the American revolution was a constitutional and not a democratical movement ; it became, in the circumstances of its course, probably necessarily, a means of advancing democratic power in America, and by imitation and sympathy elsewhere ; which bent, tendency,

and effect were natural and unforced. The first accident which gave a democratic tone to the course of constitutional events occurred before the opening of the war; this was the publication of Hutchinson's letters. The second set of accidents which emphasized that tone, and even exasperated it, was owing to the form which the war took after the surrender of Burgoyne, and the failure of the negotiations of the Parliamentary commissioners with the colonists; for after that the American state assemblies made private war on the properties of those of the British party, in addition to the public war against the British forces, and effected a rooting out, in the middle states especially, of a social element from which something like a natural landed aristocracy was actually being formed.

[Hutchinson was a base imitation of Strafford, if one man whose characteristics were disputatiousness in public and meanness in private, may be compared to another whose arrogance was such as to preserve him from risk of soiling himself with disputes, and who, with enormous faults, was a great man. It is very interesting to examine the close similarity which there was in the circumstances, as there was primarily in the principles involved, of the civil war of the seventeenth century, and of the war between England and the colonies. The points in dispute in the beginning in both cases were the exercise of power in taxation and in quartering of soldiers. Twelve years before the Long Parliament, these constitutional questions had been supposed to be settled by the Petition of Right being affirmed. Ten years before the Declaration of Independence the repeal of the Stamp Act had apparently restored imperial harmony. Usurpations of royal authority took place in the interval between 1629 and 1640; stretches of Parliamentary and administrative authority were constantly occurring from 1767 till 1775. The civil war of England began by the seizure of the magazine at Hull; the American war began with a skirmish fought for the

possession of certain stores at Lexington. All through the years till the decisive battle of Naseby, the king's councils and commanders exhibited great moral weakness, apparently supineness, which was closely imitated by our generals in America till Cornwallis came, the only real general whom England produced (out of Asia) from Churchill to Wellesley, except Wolfe. The civil war in England was really two wars with an interval of time between them, the Scotch invasion under Hamilton and the rising in Essex being in reality a separate transaction altogether. The American war is properly divided into two periods, by Saratoga and the alliance of the colonists with France. The first of the two wars in England was not unaccompanied by bitterness, but it was wholly free on both sides from bad faith and atrocities, except the miserable proceedings of the miserable Goring; the second war was short, but far sharper, and was wound up with the execution of the king and of the officers at Colchester. The second period of the American revolution was marked by determined destructive action on the part of England, and universal persecution of English partisans, who had previously been but little molested, by the Americans who were bent on independence. Though the constitutional action of the Long Parliament was in the beginning purely defensive, a usurpation and encroachment on lawful prerogatives of the crown followed, as was naturally the outcome of events; and though the movement in the beginning was entirely void of any democratic intent, democracy developed itself from the inevitable working of circumstances. The same is to be observed of America; the revolution was in its first stages strictly defensive, becoming, not from its own nature, but from circumstances, a movement towards independence, and from circumstances also a movement towards the advancement of democratic power.]

The confiscation of the estates of Tories, as they were called, chiefly in the states of New York and the Carolinas, was a violent but not unnatural military proceeding by the Americans; there was nothing Jacobinical about it; although such is to be defended

only on the ground of necessity, and the natural covetousness of men makes us always suspect in such transactions that the necessity may not have been as absolute as was assumed. In consequence of these changes of property, so extensive that it was said one-third of some parts of New York state was seized, society, after the war was over, showed some change. Franchises remained as they had been before; in all the states full citizenship was connected with property; and though the possession of property was general, and citizenship therefore virtually co-extensive with the population, there is a very great difference between the recognition of such franchises and the recognition of general rights under the form of universal suffrage; which commonly supposes franchises to be of the nature of natural, and not conferred or acquired, rights. At the close of the war, nearly all the states, as well as the congressional government, redeemed compulsorily their paper money at a very low rate; a step which, however financially expedient, could not be other than a blow against just credit, and against the proper sanctity which ought to guard and surround contracts and properties. The confiscations also were demoralizing; at the very best, forfeitures are revolting to enlightened conscience; and these were no better than other transactions of the same kind; in many cases their cruelty was very gross and deliberate. Accordingly, opinion was prepared for the introduction, which was effected under President Jefferson, of an extended suffrage, based on personal and not property occupancy, or household qualification. It may be said that no country is so unfitted for such an institution as one a very large portion of whose inhabitants are new-comers; new-comers, too, not only from the metropolis of the state to which they come, but from all the world,

including largely the enemies of that metropolis and the free institutions and traditions which it has in common with the colony. Yet, under all these democratical circumstances, all of them natural except the last, which certainly derived its inspiration under Jefferson from a French and not an English precedent, American society has, by all that can be ascertained—and our means of ascertainment are not small—during the century since its political independence and national unity have been assured, diverged in form extremely little from its ancient conditions, and in substance and spirit perceptibly not at all; the only notable exception to this being in the case of the great city of New York, the government of which, chiefly through the operation of the system of conferring franchises on strangers, has for generations been misconducted. The political lesson to be learned from this—if the fact be admitted; and if the author of this treatise is in error as to this fact, or as to this view of the condition and spirit of a great society (speaking of it as a whole, and not of its parts, such as Virginia and the South, which have changed, owing to the emancipation of the blacks and the physical ruin of the civil war), he is incapable of making an approximate generalization;—the lesson to be learned from the condition of America is a renewed and convincing proof of the magnificent innate vigour of British principles and institutions, growing in a proper soil, be that soil the original or one to which a transplant has been taken.

When, in 1789–1791, the constituent assembly of France was making what was called a constitution, they believed, and many even instructed and acute observers of them in England and America believed, that they were imitating the founders of the American state—that state really founded at the moment of independence,

though formally not crowned and consecrated till a few years later. With the knowledge brought to us by the teaching of a century, no one who is able to rise above the vulgar notion that because the United States and France are both what are conventionally styled republics, they must of course be states of the same genus or order, is in danger of making so erroneous an estimate. It is surprising that even the language, without regarding the manner of proceeding, which the French legislators used, did not warn every one that what they were doing was something very different from establishing a state after the model of the American. The Declaration of Independence is a noble state paper; grander both in expression and in sentiment, and in political philosophy, than the vast majority of those who hear it read every fourth of July have an adequate idea of. Expression means much. The mere class and sort of language which a man uses is no bad criterion to judge the man by, unless he is a hypocrite; and a nation cannot be a hypocrite. The Declaration of Independence is written with an elevation of tone belonging to the seventeenth century, a terseness belonging to the eighteenth, and a simplicity and naturalness which anticipate some of the best styles of the nineteenth. Its philosophy and its reasoning are sound. It declares the real rights of man; not his franchises, but his rights based on the gifts and bounty of his Creator; and justifies the rebellion on the unimpeachable ground of sufficient practical cause and overwhelming public necessity. Compare this with the Declaration of the Rights of Man; the language, or dialect, thin and poor, sharp and would-be logical; the same which has since developed, or degenerated, into the contemptible jejuneness of the French political pamphlet. Respecting its matter, it is enough to say

that almost every proposition in it is false, unless some meaning, not the proper one, is attached to the definitions; and that the idea that underlies the whole of it is false. It is true that the American declaration is the work of men of one nation, and the French declaration the work of men of another nation; which will account for a difference, and for much external difference, but will not account for a difference so total in form, language, spirit, thought, philosophy, and intention, as to forbid classifying the two together under any category, or by inference classifying together the public acts and sets of transactions and movements which they represented. The French people are fond of phrases. One of those phrases, which they have adopted from the period of the Revolution, and which contains the fundamental idea of the declaration, is "the natural equality of men." There are three probabilities to one that a phrase of this kind embodies a fallacy. Such a phrase is generally the major premiss of a syllogism. He who asserts that "all men are born equal" asserts this, to follow it by reasoning, or assuming that, as a matter of course, it is a part of the assertion, that therefore all men are naturally entitled to equal shares of political power. For the reasoning to be correct, it is necessary that both the major premiss and the minor shall be true. But the phrase may be true, and the application may be wrong; or the phrase may be false, while the application is justified; or both phrase and assumption from it may be false. In this case it is not difficult to show where the fallacy both of the phrase and of the reasoning from it resides. The assertion that all men are born equal has really no meaning. Euclid proves that the angles at the base of an isosceles triangle are equal to one another; and they are so in magnitude, which is the only attribute or quality which

an angle has. But men have many attributes and qualities; and to say that men are equal, without defining in what respects they are equal, is to assert nothing at all; unless it be asserting of men what is assertible of all things in their capacity as units, viz., that one is equal to one. It is quite true that one is equal to one; but one shilling is not equal to one half-crown. As for one man being from his birth the equal of all others, when we come to define and examine into their qualities, and find on examination what is universally presumed in all transactions and all language, that no man whatever is exactly like any other, and in all high probability is incapable of being so, the more than fallacy, the absurdity, of the phrase is apparent. If, however, it were true; if a truth so important as, assuming its truth, it must be, having escaped the discovery of mankind during the forty centuries which have seen in some form some kind of social order, although as elementary and as arithmetical as that two and two make four, was at length revealed in the latter end of the eighteenth century of our era; if even all men, without being absolutely equal, were as like as sheep, or as peas, or as grains of sand, there is no connection, necessary or otherwise, between that and the corollary; that therefore all men are entitled to an equal interest in the state. If the state were a mere building, constructed on mechanical principles, the application of this corollary even in that case would be impracticable; for the foundation-stone cannot occupy the same place as the coping-stone. Much less is it true when the state, or society, is not a mere structure, but a living thing, the atoms that compose it taking their place and doing their work according to laws, all which the sum of the wisdom of all the wise men of the world has not yet found out. This

notion of equality, embodied in the public declaration of the French National Assembly of 1789, has coloured all French and, to some extent, all European politics ever since that time. In France especially, deductions from it have given a tone to their society. They have tried to bring the idea—principle it cannot be called—embodied in the maxim that men are born equal, into practice in various ways; not political alone, but social. The prohibition against a man's dealing with his property by will in any but by one equal division among his children is one of the most efficacious of their laws to keep up the memory of the idea and the belief in it. This is a species of entail more pernicious than the English method of settling land; the latter is voluntary, the French law of inheritance is obligatory. The first generation of revolutionists abstained from applying the idea of equality in their military administration; they, and their successor, Bonaparte, adopted in the army the plan of selecting the fittest. Now, however, the private soldier is his officer's equal; he does not salute him when meeting him in the street, and discipline is undermined, to what result their last war can bear witness. To this day an appeal to "the principles of 1789" is a word of power to any assembly of Frenchmen. There is one kind of prophecies which has a capacity of bringing about the fulfilment of the prophecy which belongs to the class; it would appear that this doctrine of equality resembles in some things those prophecies. All Frenchmen appear by this time to have approached, so far as a low level of political and intellectual ability is concerned, to a state of equality. They are not the only example of a similar doctrine producing similar results. One of the leading doctrines of the Presbyterian Churches is what is called the parity of ministers. It may not be owing to the

doctrine, but if not, it is a striking coincidence, that the Presbyterian Churches have been for three centuries singularly unfertile in producing divines who in ability and intellect are above the common.

Under a popular fallacy there must be generally some truth that indicates or has something in common with the fallacy; otherwise, a popular fallacy is generally not the apprehension of a falsehood, but the misunderstanding of a truth. The word "equality" is in its etymology, both in our language and the French, connected with the word "equity." But equity signifies that which has a moral or spiritual basis; the idea of equality is absolutely mechanical. Enlightened men, both of France and other countries, know now that the equality which was supposed to be set forth in the Declaration of the Rights of Man never was, or, rather, never should have been, meant to include more than an equality of men in their conditions before the law; or, in words which are more definite, that all men have a right to be treated by the law with equity. That this is a proper human right was not a discovery of the legislators of 1789, and was never, in any social or jurisprudential system in the world, denied; on the contrary, it was always assumed; and any practical infractions of the right were always known to be infractions of the moral law, which is a binding thing on the consciences of all mankind. It is not an essential condition, though it may be practically expedient to the carrying out of this equality before the law, that there should be only one law or legal system for all men to be before; circumstances belonging to mixed communities, and traditions of the jurisdiction of particular tribunals, may interfere with an apparent equality when they do in no way hinder a real equity. The principle or rule of equality before the law is in

reality a practical rule of action and conduct, far more than it can be an assertion of general right.

No farther examination of the principles which lay, consciously or unconsciously to the actors in those events signifies not, at the bottom of the movements of the eighteenth century in America and France respectively, is needful to explain, that there was nothing in reality in common in the spirit of those movements, than is contained in the above. In popular historical language, to say that the Americans were fighting to preserve rights which they had already, and that the French were striving to obtain privileges which they never had, and did not know the meaning of, says very nearly the same. The bearing of these considerations on the political problems of England of this time is, that there are now before us two roads, one or other of which we appear to have to follow. At the end of one road there is, shining in splendour and in the vigour of substantiality, a commonwealth like to our own, only more perfected; at the end of the other, but across an unfathomed and viewless gulf, a Brocken of the mountains, shadowy, gigantic, and delusive.

It is, and must be, a matter of great concernment how the great council of a nation, the body in which a great portion, if not all, of the supreme authority of the state is vested, shall be composed. It is not the same thing, how that great council is composed, and how it is to be chosen. For the manner of choosing it is properly a subordinate matter, a matter of machinery; but the composition is that on which will depend the expression, and the course of the life, of the state. It is quite possible, especially in the early periods of social development, that a council with the highest legislative and controlling powers, which is chosen not by the body of the people at all, but entirely by the king,

should be really representative of the nation as much as if it were popularly elected. The great council of the nation named in Magna Charta (the charter of John, not the renewed charters of his son) was the body of the nobility. The addition to that great council which was made under the Earl of Leicester, in the first establishment of the House of Commons (whether the Commons sat with the lords or separately), was made for the purpose of strengthening it against the crown, not in view of setting up a new power of the theoretically representative kind. It is from habit, and not from the necessary nature of the institution, that we now universally associate representation with its usual direct means, that is election. And this historical association has matured, in company with another idea not much inferior in importance; that is, that the elected representative is a general plenipotentiary, and not a delegate. It was not so at first. Our Parliamentary constitution in the fourteenth century was the parent of what we live under now; but the idea of delegation prevailed then. When Edward III. asked for supplies to carry on the French war, the Commons replied that they must consult their constituents, and would not support the war till assured of their concurrence. The elevation—for such it was—of the House of Commons from the position of delegates to the position of plenipotentiaries, and their acquisition, accordingly, of the highest degree of independence, was a work of time; and was not complete till the Stuart period, when secrecy in their proceedings, the necessary protection against royal interference, accidentally finished a process which had been for long going on. The superiority, which is unquestionable, of the British Parliament to all similar European institutions, is in no little extent owing to this peculiarity. The states of France were

limited by law to the business contained in their instruction (*cahiers*). The Parliament of Hungary might travel beyond, but could not go counter to, theirs; and all the European constitutions of the Middle Ages, except the English, were like them in this.

No doubt was ever felt of a Parliament being a true representative of the people, till the fifth Parliament of Charles I. exceeded its legal and its natural power in excluding sundry of its members who opposed the majority. As strong a popular, not to say national, feeling existed in its latter years against the Long Parliament of Charles II., as there had been against the Rump. In both those cases, the contempt under which the Parliaments fell, was a contempt, not of their constitution, but of the particular Parliaments themselves. The remedy provided against a recurrence of the like was the Triennial Act; changed, after about twenty years of operation, into the septennial arrangement. What the people of England thought of the Rump, and what they thought of the Parliament which was at last dissolved in 1679, was that they wished for Parliaments of different composition from what they had; not to be chosen in a different manner or by different electorates, but to be composed of different men. The Septennial Act appears to have been, during fully half a century, unpopular; at least, it was the object of much invective—being thought to tend towards reducing the House of Commons under royal influence. It is not easy to decipher the real operation of the Septennial Act; two of the best political authorities of the last century are very clear that its tendency in favour of the power of the crown, as supposed, was an entire error. It was not till the latter end of the eighteenth century that any at all general manifestations of public opinion took place, in favour of changes

in the constitution of the House of Commons; and the opinion was chiefly, if not altogether, based on the desirability of suppressing the crown's influence. The leading idea in all the arguments at that time advanced in advocacy of Parliamentary reform was a desire for an increased independence of Parliamentary men, rather than any assumption that Parliament was not a properly representative body. Rotten boroughs were attacked rather because their members were open to bribes than because they represented small electorates; and an increase of the county members was sought because those gentlemen were utterly free from such influence. These ideas pervade the observations of Lord Chatham on the subject; they appear embodied in Pitt's project; and also in the more sweeping one, which commanded a good deal of popularity, of the Duke of Richmond. General public opinion was not decided nor strong enough at that time to produce public action; and when, at the instance of the most respectable political party of the time, measures were taken to extinguish the influence of the crown in a great number of boroughs by disfranchising public servants, and its influence in the House of Commons itself by disqualifications, most of the feeling, and all the agitation, subsided.

When, half a century afterwards, Lords Grey, Brougham, and Althorpe, and Lord John Russell, brought the subject into prominence again, and this time from the commanding position of the Treasury bench, the arguments of Chatham and his son, Horne Tooke and the Duke of Richmond, were supplemented by one stronger than all of them. Manchester, Birmingham, Sheffield, and many other towns, had grown from small beginnings into great, wealthy, and intelligent communities, with no share in electoral privileges

except such as their citizens might accidentally possess as freeholders of Lancashire, Warwickshire, etc., and with no share as communities at all; in the Parliamentary constitution they were ignored. Now, it is contrary to common reason to ignore systematically any interest in the state, and it is mischievous to hold any great political element permanently under contempt. It may have been a theoretical evil that Gatton and Beralston sent members to the House of Commons; it was a very practical one that Manchester and Leeds did not. The Reform Act of 1832 was one of the most practical public measures ever enacted. It is necessary to refer to transactions so well and universally known, in order to exhibit the connection which exists between the spirit of the effected reform of this century with the spirit of the projected reform of the last century, and this quite beside any criticisms which may be made upon the details of the act of 1832. That spirit was a spirit of practical improvement, and it was also that candid spirit that acknowledges palpable facts. According to our soundest constitutional authorities, the Reform Act was a natural and legitimate development. Forty years before, Edmund Burke had said, "We have an established monarchy, an established aristocracy, and an established democracy, each in the degree in which it exists, and no greater." Supposing this to be true in 1790, it had ceased to be true in 1830. There never was a clearer case for the readjustment of the political balance.

Many men of liberal and understanding minds, and many men whose minds were neither liberal nor understanding, entertained at that time serious fears of the rapid growth of democracy; and by consequence, as they supposed, of Jacobinism. Fears of democracy were sufficiently well laid by the immediate

events; and still more, by the return to office first, and to the very highest public estimation next, of one of the most anti-democratic men that ever lived—the second Sir Robert Peel. With respect to Jacobinism, there is no necessary nor natural connection between that creed, or rather that passion, and democracy. On the contrary, there is no society so anti-Jacobinical, as a democratic state in which the possession of property is general. The two most Jacobinical things in the world are a covetous heart and an empty belly. The prejudice against democracy, which is common among educated men quite as much as among rich men, is much more reasonably based on the presumption that an aristocracy, from the circumstances of the superior education and more confirmed traditions of its members, must be fitter for the work of government than persons chosen from the ranks. This presumption is true; not true as an absolute principle of society, but as a practical maxim; and is the answer to the question, asked often in sincerity by both Englishmen, Americans, and Frenchmen, “What are the uses of an aristocracy?” But it is true that a portion of society which by tradition and by training is set apart for the work of the government of a state is necessarily more competent to do its work properly than untrained men; not that this class are the most proper to have appellative control over the administration. Supposing that the argument against democracy in a state based on the superior education of men of birth and great property making them the fittest to conduct its government, was employed to fix the terms of the constitution of any other society, its inconsistency becomes apparent. Suppose any voluntary society for the purposes of trade—a railway company. The engineers are chosen for their knowledge of their business; but to be an engineer is not a qualifi-

cation at all for membership of the supreme council of the company, its board of direction ; much less is the board of direction chosen by the engineers whom it is to control. An aristocracy, to be such in the true and proper form, are the servants of the state ; but they are not like mercenary soldiers, who are only to obey orders ; they do not cease, in becoming public servants, to be citizens ; nor do they cease to be a very essential part of the society in general. Accordingly an administration of the commonwealth through an aristocracy is not incompatible with the supreme power being mainly democratical. And it would be unnatural if it were so ; for the supreme power of the state must, whether directly representative or not (although we need scarcely suppose an instance in which it is not directly representative), be largely and overwhelmingly influenced by the spirit of the whole society ; which by natural economical causes may be advancing in a democratical direction by the increase of private wealth, while the aristocracy stands still. Such is the case in England now. The second Reform Act, that of 1867, is properly to be regarded as a natural amplification of the first. The circumstances under which it was enacted concealed this from those living at the time ; and there were considerations which led to its enactment which were new, and unlike those which were efficacious towards the enactment of the first act ; but the similarity of their effects is sufficient proof of the real similarity of their meaning and intention, of the spirit and idea which were at their bottom. It was said, after the Reform Act of 1832 came into operation, that the composition of the House of Commons was entirely changed. Whatever may have been thought in the warmth of anger and in the coldness of disappointment by its opponents, was very much modified as the years went on ; there was a

change, but it was not great, and it may be doubted if, on the whole, it was much greater than the change which would in natural course have come without a Parliamentary reform at all. For society was not standing still; wealth, great portions of it in the hands of uneducated or half-educated men, was increasing; and these men had their place in the commonwealth, a place which the Reform Act recognized and did not create. The same may be said of the change, or of part of it, which has taken place in the composition of the House of Commons since the change made in 1867. There are in that House, let it be admitted, more *mere* rich men than there were; and there is a larger number of literary men, professional politicians, unconnected with the natural governing aristocracy. It is not possible to deny this; but it is not unreasonable to attribute it to the changes proceeding in society quite as much as to the operation of the electoral laws. If so, the second Reform Act was a natural and legitimate development of the first.

It is, however, not to be disputed that an alteration has taken place in the popular and general view of the mode of treating the means of the choice of our supreme tribunal. The object aimed at by the reformers of 1780 was plainly an alteration of the composition of the House of Commons. The same was intended by the legislators of 1832, with this addition, that they designed the means thereto also as an end; that is, they looked on the enlargement of the constituent body, and the necessary interesting of a larger number of the members of the commonwealth directly in the commonwealth as a political object to be sought and effected. This was still more the case in 1867. The two objects are not, it is evident, incompatible with one another, but they are not of necessity connected. The former is

an essentially good object; the latter is good or the reverse, according as the elements to be associated with the state may be good or the reverse. In 1832, the invention of a new franchise was thought a triumph of political wisdom; and not unnaturally so, in a community which owes a great deal of its past development to political compromises. Compromises are of two kinds: compromises which by their nature are applicable not only to the circumstances of the times when they are entered on, but to the future also; compromises which are of the nature of conventions; and, secondly, compromises which are only expedients applicable to the time, not being based upon anything that can be referred to principles of general agreement and acceptation. The great body of our constitutional law and proceeding, contained in acts of Parliament, contained also in received maxims and conventions, and in precedents which are appealed to as authoritative, is a mass of compromises of the first kind. The institution of the ten-pound householders was a compromise of the second kind. It is evident that, the motive being admitted of the desirability of associating as many citizens as practicable with the commonwealth by franchises, a qualification of an arbitrary and perfectly artificial kind was not likely to be adhered to; and would be adhered to only by accident, and by its reaching, which could hardly occur in a condition of society anything but stagnant, a prescription like that which for four centuries surrounded the forty-shilling freeholders. There was one point only in it which presented the idea of permanence; it was based on the possession, or on the ascription of the possession, of some property. So is the household qualification. A householder has some property; he has his household goods; he has contracts, which are a form of or rela-

tions of property ; he has an interest in public order ; and an interest, if he knew it, being not a rich man, in the goodness of the public regulations for the preservation of general cleanliness and health, greater than that of the rich man himself. If the franchise entitling to a share in appointing the great council of the nation was to be limited to a certain rank according to a certain money qualification, there was nothing in the point of the limit of a nature to appeal to men's common reason ; and it was a matter of course that that limit should not continue to be operative.

The circumstances under which the second Reform Act was enacted were such, that very little attention was given to this, which is now so evident ; but it is as evident, that no part of that enactment in itself, or in the mind and intention of the enactors, contemplated conferring this important franchise on the ground of the possession of it being a right ; it was uniformly treated, and is so treated in most of the discussions on the subject which are now proceeding, as a power given to certain in the interest of the community ; and it has been tacitly, if not expressly, admitted or assumed that those who should possess or be entrusted with it should be so endowed as possessors of property, or as having a natural interest in the general society as heads of families, persons of some permanence or standing in their quality. This points to the great difference which there is between a franchise of householders and a universal franchise. The latter introduces into the state a vagrant element, which must be evil. The Americans from experience acknowledge this ; and this vagrant element which they have allowed to enter into their state to its detriment is only kept from being predominant by the vast distribution of property among their population. Their society, accordingly, has not

suffered by Jefferson's innovations as the society of this country would by the like. If universal suffrage is ever established in England, the strain upon the Commonwealth will be severe. Our society is strong, and can bear much; but the practical recognition of a radically false political idea of importance might lead to a moral revolution, more vital in its results than any civil confusion, which the habits of our people give strong hopes may never overtake us under even the strongest excitements. It is difficult to suppose that the introduction of universal suffrage could ever take place in this country except for the avowed reason that a share in the constitution of the state is a right, and not a privilege and a trust. The proposals which are being advanced at this time for the extension of electoral powers to larger numbers of the community are hitherto for the most part free from this kind of advocacy; it is, therefore, entirely matter of expedience whether they shall be adopted, and to what extent; it would be contrary to all our experience if their adoption, even to the fullest, were followed by any change of at all considerable magnitude in the composition of the House of Commons.

In the provisions of the first Reform Bill, it was an error which we can now appreciate, that a new and evidently unreasonable franchise was introduced in the newly created boroughs. There was an example in Westminster and in many more cities of a general franchise vested in all householders; it would have been no fanciful innovation to imitate that. Also, in many of the borough towns the constituent power had been in the corporations; many of which had become, either from their original constitutions or from usurpation, close. It has been pointed out in an earlier part of this treatise that in the course of centuries, and especially during that period of development on which

England entered beginning about the time of the invention of the steam-engine, the country outgrew its local and municipal institutions. A great reformation was effected soon after the Reform Act came into operation, which reformation was very probably more easily effected by a Parliament in which the corporations that were reconstituted were not directly represented; but this was no reason for abstaining from giving franchises of the higher order to all those who, two or three years later, were given the lower, or municipal franchise, in those boroughs. If it be admitted to be of great social importance that the inhabitants of a community, of all classes, should be contributors to the life and strength of the community, it is a powerful means towards promoting that general life and strength, that the association shall be general and not fitful. Now, by the separation of the inhabitants of our great cities into two classes—those who had two franchises and those who had only one—people were taught to judge as if there were something generically different between the greater political life of the state and the lesser political life of the municipality. Every artificial contrivance of the kind, being of the nature of separation, tends, whether visibly or not, towards the nourishment of class feelings, and, by consequence, towards a facility for class legislation, and a mitigated opposition to it. The more interest in common the members of the same community have, it is the better for themselves and for the community; society is stronger and more healthy. Formerly it was a matter of course that members of Parliament were chosen from among the principal inhabitants of the town or county which elected them; and it was a matter of course and appeared natural, as it was natural, that tenants should vote for, or the same way as their landlords, workmen with their

masters, and the like. This began to be called slavish ; and if a divorcement had occurred between the great social interests of the different classes, to continue the political allegiance and connection might become so ; but when no such divorcement has taken place, the connection is natural, and will appear so to people in general. The English nation is not divided, and never was divided, into Whigs and Tories, Radicals and Conservatives ; the great permanent social instincts and interests are greater than the party instincts and interests ; and they ought to be so.

The almost entire want of municipal institutions in England, except in the towns and cities, is a strong reason for deferring the extension of the franchise till after the institution, now contemplated, of municipalities in those rural districts where they do not now exist. Moreover, if such extension—that is, to all householders—were effected now, it would of necessity include a large amount of that vagrant element which ought to have no place in the state whatever ; unconnected with property, unconnected with regular employment, unconnected with local interests, and, therefore, unattached to national interests. Whereas if municipalities, succeeding to and superseding the miserable system of vestries, which at present pretend to perform administrative functions, were established over the face of England, with an area for each wide enough to contain a public, which the parish as such does not, and were these municipalities constituted, as they must be, on a recognition of property and the interests which belong to it, they would become at once political centres, or roots, from which the greater franchise could grow.

The Reform Act of 1832 and its successor and complement maintained the variety of kinds of electoral colleges which had subsisted from the beginning of

Parliaments. It is not too much to say, that the maintenance of such variety is essential to having a true representation of society in the supreme council. This is susceptible of almost mathematical proof. There is no known way of choosing such supreme council except through the voice of majorities. If the electoral colleges are all of the same order and description, and all of the same extent, the majorities cannot be expected to be otherwise than homogeneous. But it is of the very essence of society that it shall be varied. No contrivance has yet been devised more proper to degrade the state than the vesting of absolute power in a majority in number of the inhabitants of a large area; the most capital, because the largest and most perfect instance of the operation of the scheme which has occurred being the election of the second Bonaparte to the headship of the French state in 1852. Yet this kind of scheme has many admirers; chiefly, because it is so mechanical, and is or looks so simple. Seeing that as society advances in civilization it becomes, from the nature of its civilization, not more simple, but more exceedingly complex; a machinery through which the highest expression of the society is to be arrived at ought not by any presumption to be simple in order to be effectual; the presumption is the other way, and the examples are also. Political forms and social conditions, in France, are amazingly simple; and political life is of a low order, bearing somewhat the same analogy to that of this country that the organization of the jelly-fish does to that of vertebrates; and like the jelly-fish, it has a sting. The assumed right of dictation in majorities, or in a majority, is not a natural right; it is not a right at all. Majorities are expedients, means to an end; the use of them is matter of convention; and the proper use of them, and when to use

and how to apply them, is matter of long and not yet perfected experience. No one proposes to apply the machinery of election by majorities to the appointment of juries, and no sound politician desires to see it used for the appointment of judges. There are cases in which, in legislation, the majority is almost certain to be in the wrong. If, at any time from the death of Francis I. to the death of Lewis XV. the people of France had been asked to determine by voting whether the reformed religion should be tolerated, they would have given a majority against it. Suppose that at any time from the beginning of the seventeenth century till the end of the eighteenth the English people had been polled on the question of toleration to the professors of the Roman Catholic religion, they would have replied in the negative. Beyond this, voting by numbers, and by numbers alone, at any time and under any circumstances when the persons voting have not had full opportunity of hearing all that can be said to resolve their opinion, is a representation of, or a giving of effective power to, those who are not in a position to come to a right one. If the majority of the voters are ignorant in general, the ignorant will outvote the instructed; or if the ignorant are divided, the decision of that which is before the electorate is practically left to chance. Men do not require an extensive amount of education to enable them to decide on the moral qualities of the men whom they are to choose for office, and therefore the choosing of such by the mode of voting by majorities has been found generally applicable. But if, as observed above, all electoral colleges are like one another, while there is no practical likelihood of their seriously misjudging in many instances the moral qualities of those who come before them for election or rejection, there is the utmost

probability of their choosing one class of men in respect of qualifications of intellectual ability; or, varying in that, choosing men whose chief recommendation is mere popularity for one reason or other. To prevent this, and to ensure a variety of representation, a variety of constituencies both in kind and in magnitude, having been always found a sufficient means to the end, is not a plan to be departed from with safety. It is no disparagement to a various and arithmetically unequal system of representation, that it is arithmetically unequal. To represent the members of the community in their great council in their capacity as units ought not to be the object; they ought to be represented as interests, as minor communities, and as intellects, and for their capacity and power to serve the state by their choice; it being never to be forgotten that the object of the supreme council is that service, and that its proper composition ought to be the primary object, the mode of choice being secondary and ministerial to that end.

If the constitution of the House of Commons was framed on the plan of proportioning the representation to the number of inhabitants of each electing district, the results would be such as could scarcely commend themselves to those even who are favourable to apparently equal and mechanically symmetrical systems. London contains nearly one-eighth part of the population of the United Kingdom; if that city, or aggregate of cities, sent one-eighth of the members to the House of Commons, it is evident that it would be prodigiously over-represented. For in one way, and that a very important way, all the members of Parliament represent London; they are Londoners for half the year, some of them for the whole of it. London contains more inhabitants than all Scotland; and such a share in the

representation as would place it above Scotland would be thought, and justly thought, by the Scotch people as putting their country under contempt. If population be the proper and only basis (of representation), there is no place for the universities in the great council of the nation. Neither is there a place for property; and property without the power of making itself respected is in no little danger of sooner or later becoming a prey. It is not to be disputed that the idea of human equality which recommends universal suffrage and equal electoral divisions is a Jacobinical idea. There are many men who approve of the scheme who are not Jacobins; but there are no Jacobins who do not advocate it.

Fanatics of an opinion, though that opinion may be contrary to morals and ordinary prudence, are not always imprudent in their advocacy, and are not always imprudent in their application, of the opinion. This may appear an inconsistency; but it is like what we observe of the constitution of human nature. Madmen are often mad in only one thing, sane on others, and in respect of the one thing about which they are mad they exhibit the same cunning that they do concerning ordinary affairs. The Roman Catholic fanatics who persecuted the reformed religion with fire and sword in Europe, suspended both the expression and the exercise of their principles when they went to the Levant or to the farther East; and even at home, the heads of their religion often made a boast of their moderation and clemency. In like manner the fanatics of the doctrine of human equality, at the present time as formerly, suspend both the assertion and the application of their idea when they have to regard the circumstances of conquered and of barbarous peoples. All Europe saw, when the apostles of equality (in its

French form) overran its fairest parts from the years 1793 to 1798, how they carried out their principle; establishing an equality of slavery and subjection, and no other. It is not different now. There is a project at present for establishing what is called (or to be called) a constitution in Egypt; but that is a thing for the future, and not the present moment. The wildest fanatics do not propose to establish the political rights of man in that country yet—prudence restrains them; perhaps that kind of prudence which teaches them that a signal practical failure would bring their idea into general contempt for a time. But there is a country on which political experiments have been long tried, where they are not so backward. There are many people who are not Jacobins, who would shrink from anything of the nature of public robbery, but yet who are so far imposed on by the Jacobinical vocabulary that they are not averse from assimilating the political arrangements of Ireland in every respect to those of this country. It is plain that if the project of universal franchises and electoral equalities (voting by head, in short) was carried out in England, there are multitudes of influences which would by their social and moral force mitigate the evils which that project is certain to promote; but in Ireland those influences are far weaker, and they would probably be overwhelmed in a general robbery of persons of property, and it is not unlikely, in bloody proscriptions. The more moderate, because less principled in the idea, allies of Jacobinism may not, and it is to be presumed do not, seek at this time to carry out any near approximation to the project; but they, or many of them, adhere in so far to the doctrine of equality, that they are ready to administer affairs in Ireland in every particular exactly as it shall be determined to administer affairs in England; the same

system of public education, the same municipal institutions, the same greater and lesser franchises. In the beginning of this treatise it was assumed, as one of the postulates of sociology, that mental and moral qualities, like physical qualities, are hereditary; which is systematically, though not universally, the case in the individual, and absolutely the case in the mass or community. No man can be found to dispute the existence of diversities of disposition in the various families of mankind; the ways of accounting for them will differ, and the degrees of diversity will be matter of definition and of varying estimate; but the experimental fact of diversities rests. This, if the only reason, is sufficient to do more than throw doubt on the policy, to speak of nothing but probable practical effects, of making by artificial legislation the same institutions for two very different communities; it ought absolutely to condemn the policy. Some mitigation may be gained of the effects of the application of false and erroneous systems to great multitudes of men in their mere personal capacity by the operation of averages; no mitigation is to be expected when such are applied to communities. The health of the individual will sometimes kill the disease; in the community the disease will spread by mere fermentation. There are no two races of men in Europe more different than the Saxon English and the Irish Celts. There are three principal Celtic peoples in the west of Europe—in Spain, in France, and in Ireland. The Irish Celts resemble in some respects the French, and in some the Spanish. The French Celts have a kind of instinct of a low mechanical sort of order; the facility with which they accommodated themselves after the great revolution to the imperial rule exhibits this inclination. Two hundred years before that, France had passed through

a period of anarchy ; and the very slowness and deliberateness with which that country settled itself under Henry IV., its constitution and its society not shattered, but actually reformed, as forcibly appears under his administration and that of Richelieu, mark a very different spirit from the slavishness of the people under Bonaparte. The reason is that, after the revolution, the French nation, having expelled, massacred, or executed the three hundred thousand of their number who represented, by descent or assimilation, the Frankish element in their community, was far more Celtic than ever before ; more Celtic not in disposition alone, but actually in blood. The Irish have not this orderly instinct which distinguishes the French, and which may be the instrument, under changes we know not what in the centuries to come, of building up amongst the latter a higher civilization than they are at present capable of. France, after the revolution, settled itself ; Ireland never settled itself, but was always easily to be settled by an exercise of force, and was always capable of being continued in that state of settlement by a continued exercise of that force, so as the force pressed with proper restraint on the various parts—in other words, as long as the administration was just ; justice consisting in good government, not by necessity at all in the government of the governed by or through themselves. The taste for anarchy, which there is much of in the Irish, is far more like the Spanish disposition than the French. If it should so happen that that island should become politically independent, it is far more likely to resemble in its development the miserable republics of South and Central America than the comparatively respectable one of France. The Irish, in another matter, resemble the Spanish rather than the French Celts. While all are physically brave,

both as individuals and in disciplined masses, the Irish are far more given to secret murder and other forms of private vengeance than the latter. They have one peculiarity which is only to be occasionally observed, and is likely to altogether expire through the influence of intercourse with strangers—a jealousy of the motives and actions of strangers amounting to suspicion; a thing said to be not yet extinct among the inhabitants of Wales; a thing entirely barbarous. In accordance with this, gratitude is a rare virtue amongst them; in which they resemble the French. Indeed, gratitude is a very anti-Jacobinical sentiment; for it supposes some superiority in him towards whom gratitude is felt, which implicitly contradicts the doctrine of human equality. There is another more important point which the French and Irish have in common—a point so important as to produce a perceptible effect on the politics and history of more than one nation; the power of assimilation. It was commonly observed of the early Norman English settlers in Ireland, that they became Irish in two generations; and the same may be said, though in a less degree, of the Elizabethan colonists. Those colonies were planted but in small numbers, and with a view more to government than colonization; and it was not till absolute colonies were planted, under James I., Cromwell, and William, that communities were formed, the relics of which unto this day retain a distinctive English character. The facility of this assimilation of the settlers, who had not numbers sufficient to keep them separate from the natives, nor religious institutions which had, in the case of the settlements of the seventeenth century, the same effect, is ascribable to the general fact of human nature, that it is easier to sink than to rise. If an Irish family, or cluster of families, is settled in England, two genera-

tions will not suffice to raise them to the English level, in their love of order and cleanliness; an English family, in one generation, through the invincible infection of the love of sloth, becomes Irish if settled in that country, unless in company with others. Besides this influence, there are other things in the Irish nature and character which seem, difficult as it is to understand for those who do not know that people, to attract. A similarity to this absorptive power, belonging not to the Celtic races specially, but to all inferior ones, is observable in the rapid assimilation to France of the German provinces of Alsace and Lorraine. Although Alsace was politically French for only one hundred and eighty years, the inhabitants became virtually French, and appear at this time averse to receiving the higher civilization which Germany can offer them. When a Frenchman goes abroad to the East, it is observable of him that he unites with and consorts with the people whom he meets more easily than an English settler; it is for a like reason to the above: he has not a great depth to let himself down. Russians, and other Slavonians migrating to Asia, become orientalized rapidly; but this is not so remarkable. The Spanish people are regarded by Mons. Comte as having brought to the highest degree of perfection a quality of which he makes much account—personal dignity. The Irish do not resemble them in this; they resemble the French. Since the Revolution, the great, even the eminent men, whom France has produced, have been rare; and the present state of their society gives no promise. Ireland has produced many men, not only great but commanding, in literature, politics, and war; but they have been none of them Celts, except two, Patrick Sarsfield and Daniel O'Connell. That people is altogether the meanest on the face of Europe.

The happiest period of that country's existence was during the twenty years following 1849. By what resembles that which is styled in some of our common mercantile and legal documents the act of God, the fearful over-peopling of Ireland received about that time a sudden and tremendous check; its property in great part was transferred by the regular course of trade to new and abler hands; and production and the increase of wealth and well-being proceeded as they had never done before, unless the accounts which we have of the ten years of Cromwell's government are unexaggerated. Education, both of the higher and lower kinds, advanced on safe lines and without public extravagance; and political agitation subsided. This good and promising condition was interrupted by the operation of purblind and speculative legislation. The Reform Act of 1867 was for Great Britain only; and though every one knew that the circumstances of Ireland were such as to make what was in England a legitimate extension of the system of 1832, entirely inapplicable, because there was nothing that required reforming, a bill was introduced into Parliament in 1868, enlarging the base of the franchises in Ireland in about the same proportion as it had been enlarged in England and Scotland. It is said that one of the leading statesmen of the then government, which had the carriage of the bill—a nobleman who had sat in several Parliaments as the member for a large Irish city—consulted his constituents concerning the probable effect of doubling or trebling the number of electors; and their reply being that the political balance was not likely to be much affected, the statesman persuaded his colleagues to recommend to the House of Commons the bill, which was not unwillingly passed into law. If this story be true, no instance is easily to be found of higher warning against

permitting mere considerations of party, which are often considerations of persons, to influence acts which ought to be undertaken on grounds of enlarged political expedience alone. The results of this measure, which is weakly characterized if called inconsiderate—this insane measure—are visible to all the world. Forty or fifty men have been introduced into the noblest assembly that has ever existed, determined enemies of the British empire and of the English name; men who abstain from no manner of showing their enmity, however indecent, and from no means of working their ends, however wicked; brawlers, apologists of and inciters to crime. Some of these men are so foul and black that they are seriously frightening the English Jacobins, who would be ready enough to join them were they commonly decent in behaviour; and one benefit has been derived by this very ferocity and outrageousness; for any project of still further extending the Irish franchises has been discredited, for the present at least. There are schemes said to be in preparation, however, for greatly enlarging the municipal institutions of that country, rural and urban; which, if done by making those which exist already more democratical than they are, and by erecting new ones of the same remodelled description, could not fail to be productive of great evils; for they would be used, not for the purpose of administering the local business of the community, which is at present done wonderfully well, but for the purpose of strengthening the anti-British party, consisting probably of two-thirds of the inhabitants.

A contrivance was adopted in the act of 1867, for the purpose of effecting what is called the representation of minorities; by providing, that in those boroughs and counties which elect three members to Parliament,

each voter shall vote only for two; and some persons recommended that in those which elect two members, each voter should have a vote for only one. The idea of what representation is, is misconceived by the advocates of this machinery. The electoral college has the privilege of choosing a person or persons to represent it; and whatever means may be taken to arrive at their choice, the person or persons chosen are the representatives of the constituency, not of those who have given them their affirmative votes. The minority, who have given their votes to others who have not been elected, are not unrepresented; they think they would have been better represented had the result been different; that is all. In the same manner, when a borough has elected, as often happens, two men of political opinions and connections different or opposite, some persons say that the borough is really not represented at all. This is assuming that mankind are divided into Whigs and Tories—a narrow and ignorant notion. It may be that the machinery of the minority vote, as it is termed, may on some occasions be the means of bringing into Parliament men whose absence would be a public loss; but a reliance on that, or on any artificial scheme based upon the representation of mere numbers as distinct from the representation of interests, will fail in the object sought; which is, or is understood to be, to correct the preponderance which the sum of the homogeneous majorities must have overwhelmingly if all our electoral colleges are to be alike in size. The scheme is an admission of the vicious theory of representation referred to above; and it is an admission also of the equally vicious maxim, that numbers are the proper basis for representation to be according to. The fact that no natural right exists in majorities to dictate to the whole community is a consideration of

an entirely different kind from the use of majorities as a machinery, or even as the machinery for arriving at a representation of the public sense, or for electing a council which shall be the supreme power in the state.

In alluding to the admitted doctrine that members of Parliament are not delegates, it was observed above that this is distinctive of our Parliament. It is to be said also of it that it is fundamental. For Parliament is an imperial body; it is the supreme power of the whole empire. Now, if it ceases, as under the theory of delegation it would cease, to be an independent council, with a spirit, a conscience, it is not too much to say, a soul, those members of the empire which are not directly represented in it, and which it is impossible should be directly represented in it, would without almost any doubt cease to have respect to it, and consequently their allegiance would expire. This would be a practical evil that can be understood by any one; in addition to it, there is the precursory moral evil that is involved in an abdication generally of authority, and always of duty. It is to be observed, that of late language has been frequently used by public men which points to what is very like, if not the same as, this doctrine of delegation. Mr. Gladstone has used words very much to the effect, that he regards the highest function of a statesman to be to carry out the will of the people. If Mr. Gladstone meant, or means, that he considers it the function of a statesman so to discern the sound and matured judgment of the public that he shall be able to strike upon the proper times and occasions for performing those acts, and perfecting that legislation which the advancement of the highest public good calls for, this is comprehensible, and it is wise; that is a just and elevated idea of the statesman's place. But what common people would understand by such

words is very different. "To carry out the will of the people" is indefinite in expression. "Will" has many meanings or shades of meanings; "people" may mean a great many things. Another man's will, unless that other man be one's master, and his commands lawful, is not a proper rule of conduct; and the people is not, unless he choose it, the statesman's master. The crown is; and that in form only in a constitutional state like ours. The ministers of the crown are under no covenant or convention to obey the commands of the people, supposing the only way by which such commands can be conveyed, that is, a resolution of the House of Commons. They have, in fact, two other options; they may surrender their offices, or they may dissolve the Parliament, the crown assenting. It may be the duty of a statesman to do any other thing whatever than carry out the will of the people. Suppose a sudden panic of passion among the people, in the very largest meaning of what "the people" is; a panic pervading all classes—bankers, merchants, employers, workmen, landowners, farmers, men of letters; and a clamour for a war; that man, whoever he may be, who does not resist the popular will unless he believes the war to be a righteous one, is not doing his duty. "Will" may be a deliberate will; but for a man to yield to the deliberate public will when he believes that will, if an opinion, erroneous, and if an affection, wrong, is abdicating his duty just as much as if the opinion or affection were of a more transient kind, and perhaps more unpardonably. Again, what is "the people"? It may mean the real people or public, but very often it means the common people; and it is growing to mean the mechanically ascertained (if ascertained) majority of those who are in the possession of, and exercise, franchises. For it is to be noticed that there are many kinds of

majorities. There are "simple" majorities, and "two-thirds" majorities, and others; majorities of the proportions of as many fractions as can be contrived between one-half and one; and "absolute" majorities. Probably there are others, but it does not signify. But according to the notions of the authority of majorities now most in favour, the active majority may be a very decided minority of those entrusted by the state with voting powers; and it is not too much to call any man unreasonable whose doctrine invests the delegation of such with an absolute or special sacredness. Let it be supposed that a matter of vital and permanent import to the well-being of the commonwealth is under debate; such as the establishment of a universal franchise, the secularization of Church property, or a scheme for a graduated income tax or a similar seizure of the goods of a class who may become unpopular because they are easy to rob; and let it be supposed that on a dissolution of the Parliament a new one is chosen, a small majority of which, elected generally by small majorities of voters, is bent on effecting the project under discussion; and that that majority is led and marshalled by enthusiastic and determined men; perhaps no public circumstances would be more likely to produce civil confusion. The idea of the right of a majority to enforce its will on the whole is of that nature that it will push its claims to usurpation; for if it be a right at all, there must be a wrong done it by resisting it; but in such a case—and such is not unimaginable—as that supposed, there would be resistance, of perhaps as passionate a degree as the advocacy; and a straining of the powers of the constitution from which the constitution, and by consequence the commonwealth, must suffer. It has been, if not always, almost always, the method which the commonwealth of England has pursued in important things,

that it has not done anything in a hurry; but when a great constitutional or other law has been consummated, it has been after long deliberation and debate, and against the time when the public opinion has been matured; and by reason of this deliberateness, what has been done has been generally well done, and has very seldom had to be gone back upon. The introduction of a machinery like a steam-engine with no governor, watched by engineers and with its furnaces stoked by men who are taught to think speed everything, would be something new in form and spirit to English political life. It would be no small aggravation of the evils which could not but follow, that many of the things which are contemplated by our Jacobins, or semi-Jacobins, if once done, could not be undone. Franchises once given, no matter how mischievous is their exercise, as in the case of Ireland, are very hard to take away; and the transference, by open violence, or by legal wrong, of property, from one class of persons to another class, or to the state, is a crime for which there is no place for repentance, so rapid is the growth of the prescription of ownership; a crime, also, prolific of its own propagation. The reverence for will is utterly erroneous and contrary to morality, be that will the public will or that of persons. It is dangerously prevalent, colouring our conversation and literature, above all, our fiction, at this time.

[A reference to "Clarissa Harlowe" and "Guy Livingstone" will explain this, if it be not plain. Richardson makes his hero, who perseveres in a base design to gratify his pride in success rather than his lower passions, nearly a devil; Guy Livingstone is painted almost as a demigod. It is not out of place to speak of this in such a treatise as the present; fiction is now what the drama was before books were cheap.]

Will, in the popular sense of mere determination, is not a moral or spiritual force at all; it is a weapon, the instrument of intelligent beings to their purposes; neither good nor bad in itself, but according to the use it is put to. In this treatise the word "revolutionary" has been used more than once. There are only two real revolutions in society; changes in the possession of property, and changes in the received doctrines of morals. The misapprehension of what will is, and the reverence for it, are revolutionary; that reverence is contrary to morals, as observed; contrary to fundamental morals; and the political idea of the rights of a majority is closely connected with it, and is illimitable in its application, and if once associated with Jacobinism, dangerous to an unlimited extent.

Any readjustment of the political balance after the manner of the Reform Act of 1832 which is made at this time is not likely to leave out of the account the position of Ireland, and the propriety of reducing the weight now given to that portion of the United Kingdom. At the time of the union one-sixth part or thereabouts of the whole representation was allotted to Ireland. Since then Great Britain has more than doubled in population; and though numbers are not the proper basis, as has been shown, to found a scheme of representation upon, they are an element for consideration in estimating the weight which ought to attach to the interests which should be represented. The population of Ireland has increased hardly at all from the beginning of the century till now. The wealth of Great Britain has increased a great deal more than in proportion to the wealth of Ireland in that time; probably not less than three or four fold. If a sixth part of the representation was a proper share for Ireland in 1800, a twelfth part would be ample now.

There are other projects for determining the position which that country should occupy in the British empire. An example, certainly with differences, is said by some to be found in the position which Hungary occupies in the empire of Austria. These are similarities with the differences. During the administration of the late Prince Metternich, that empire consisted of not a union of states, but of several states, monarchies, which had all the same monarch. Those various states were administered according to different systems, a very large amount of interference and control being exercised by the monarch through his ministers. Some of the states had constitutions; in particular, the kingdom of Hungary and Croatia, which, after centuries of political and religious contests and wars, attained, in the reigns of Maria Theresa and Leopold, a large degree of liberty without an independent existence, and without having any privilege of correspondence with foreign nations, which was the personal business of the king. The royal and imperial house being German, and their residence being in the capital of their German dominions, German Austria possessed traditionally a supremacy in the general aggregate of states; the chief ministers of the emperor were chiefly Germans, and the lesser offices were chiefly disposed among a small aristocratic circle—small for so great an empire. Metternich carried on the administration on the system of maintaining the German supremacy without encroaching on the liberties of the various states; he was commonly supposed to be a mere absolutist, but was really nothing but a Conservative, with more than the average ability belonging to men of that turn of mind, and in addition a self-sufficiency which often gave to his proceedings the appearance of trying to dictate when he in reality did not mean more than benevolent interference. Usurpation

The relations of the commonwealth to its dependent commonwealths.

and aggression were not in his nature, and he was desirous of developing within what he considered safe limits the local institutions of the various Austrian states. He was overthrown in an ignominious way—by a street revolution—and was succeeded by men with all his faults and none of his wisdom. The street revolution was soon followed by a counter-revolution, when the sentiments which had animated great multitudes of Germans in the year 1848 fell under discredit. At the time of Metternich's fall from power, the Hungarian Parliament entered on some changes of a democratic kind, and the predominant party in that Parliament (and government) united itself in an alliance with the much more revolutionary democrats of Vienna; a fatal step, which involved them in the downfall of the latter. They had for this the apology that the imperial government, terribly weakened by the events of the early part of 1848, did without doubt encourage the disaffection of the Slavonian subjects of the King of Hungary—to its temporary advantage, for an army of Croatians assisted in the final suppression of the revolt of Vienna. The new Austrian government used much cruelty after that victory, and proceeded to unconstitutional lengths in Hungary, such as Metternich would never have consented to. The consequence of this was that when, in the course of some years, Austria was assailed by Prussia, that nation which in the time of Maria Theresa had maintained her inheritance, which in 1797 had by its threatening attitude arrested the march of Bonaparte, and which twelve years later was preparing to throw its weight upon him again, and hurried him into a treaty; that in 1866, though the Prussians were before Vienna and their own capital Presburg, the Hungarians would not move. This produced a great change. A new constitution was intro-

duced into the various Austrian states, which for the first time were united by other bonds than the mere headship of the emperor, and an attempt was made to include Hungary in this. But the people of that country would not give up its traditional independence and historical constitution, the whole Parliamentary part of which had been under suspension since 1849. Accordingly, the kingdom of Hungary and Croatia was restored; and the other states of Austria were united under one constitution of the representative kind; the manner of administering the central imperial government, and the traditional foreign political system which belongs to it, being very little affected; for the restored Hungarian kingdom has no relations as such with foreign countries. This is what is called dualism. Since its establishment the Austrian monarchy has been put to no severe test of strength; it has had troubles, some of them external, but most of them arising from the creation of new elements, whether of vitality or of disorganization opinions differ, by granting new and ill-comprehended franchises to a variety of peoples; some of them highly civilized and polite, inferior in integrity and virtue to none in Europe, others no less than barbarous. But what is to be remarked especially is, that, with little exception, no trouble nor disturbance has overtaken Austria as remodelled from Hungary. One inference which has been drawn from this is, that a separation between Austria and Hungary having been effected, a like separation between Great Britain and Ireland is, if not unobjectionable, at least worthy of consideration.

As stated above, this dualism has really never been tried; the first severe trial to which it will in all human probability be subjected within a generation may prove too much for its strength. That trial is

likely to be occasioned on this wise. The new constitution of Austria, so far as its representative part is concerned, is founded on the vicious system of regarding amount of population as the only basis for the proportion of representation; accordingly, the barbarous and inferior constituents in the larger half of the Austrian state outnumber the civilized, or German constituent. The Hungarians, as decidedly the most civilized of the various peoples of that empire, leaving out the Germans, and as having for centuries claimed and occupied a commanding position over the Slavonian peoples, are much more attracted to the former than to the latter, upon whom they look down. Neither the Austrian Parliament nor the Hungarian Parliament is a great council—a supreme authority. In that empire the supreme authority is diffused. If the Austrian Parliament and the Hungarian Parliament ever differ on a vital point—as upon what may come before them in the shape of money votes to carry on a war against their dangerous neighbour on the north—and if the emperor and the central government cannot hold the rudder-shaft, there must be confusion, and there might be chaos. If Metternich had been in power in 1849, he would never have invaded the liberties of Hungary after the reckless manner of the younger Schwartzberg; he would have put down the democratic party, for he was under the influence of the not uncommon error, that democracy is by nature dangerous and revolutionary; but he would have left the institutions of that country untouched. Also, had he been alive and in power in 1867, judging by his example when living, and his precepts only lately published, he would have pursued a different system from that which was adopted. He would have restored Hungary, as a matter of course; but he would have established, not a

constitution for the rest of the Austrian empire, but constitutions for its various states; for doing which the elements existed, in some by bequest of former ages. It is not difficult to see that this federalism, as it would have been called, is much more natural than the dualism which was initiated in 1867. It is more like the great precedent of the American union; it contains in it the possibility of a closer union in the future. As at present the supreme authority in that state is diffused, but is not easy to be concentrated when required; under federalism it would still be diffused, but capable of self-concentration.

The one point of proper comparison between the actual dual arrangement in the Austrian empire, and the proposed dual arrangement for the United Kingdom, is as in reference to the internal administration of Irish affairs; for the British Parliament must continue to be what its traditions could not permit it to cease to be, the great council of the empire. And what is fatal to any practical analogy in results is, that the Hungarians by the habit of centuries are able to govern themselves, and the Irish by the experience of centuries are unable to do so. It would be impossible to restore the system which expired at the union; and a thing not to be thought of, were it possible. That project—that is, a separation on a dual system between Great Britain and Ireland—is sometimes associated with one much larger; the union of all the colonies of the British empire together, and with the metropolis, in one federation. The idea is a grand and dazzling one. More than one hundred years ago the like was suggested in order to bring about a reconciliation between the thirteen colonies and the parent state; and it was easier under the circumstances of that time than it would be now; for the plan was merely an enlargement of the House

of Commons by admitting members from America; a constitutional change of less magnitude than the union with Scotland had been, or than the union with Ireland was to be. The Americans themselves rejected it. It is impossible to tell what the result of such a representation, had it been adopted in an early period of the disputes with the colonies, would have been; it is not improbable that the connection between them and the empire would have been preserved, and that many of those laws for the regulation of trade which were the foundation of that discontent which at last broke into revolt would have been abolished. We have at present no discontents of our colonies to trouble our state; and if there were, the increase to the numbers of the Imperial Parliament which a representation of Canada, Australia, the islands containing Englishmen all over the ocean, the Cape, would entail, would make that assembly unwieldy; besides which, the addition to the functions which it must discharge would overload it beyond the power of human nature. The precedent which was not created in the last century cannot be created now; if such a federation between Great Britain and the colonies does take place, it must be as a federation and not as a union. But it does not follow that such a federation should be by the establishment of an Imperial Parliament elected from the whole empire, leaving the various legislatures of its different members with their present local powers. There are two fatal objections to such establishment. The British Parliament is, and has been always, the supreme council of the empire; it could not, if it would, abdicate that position. And in a representative assembly as supposed for the whole empire, there is no place for India.

The British empire bears a resemblance, in some points, to the Austrian. It consists of a large number

of communities, differing from one another in race and in institutions; at the head of all, the parent state, possessed of an ancient and vigorous constitution, capable of being imitated or reproduced in its essential parts in most of the new members; all owning an allegiance to the crown, which, and not the Parliament of Great Britain, is the legal political centre of the empire, the Parliament being the centre of its political life. Many Austrian statesmen believe that the true and proper centre of that dominion is not at Vienna, but in Hungary; but without question the imperial crown is the necessary administrative centre. The people of Hungary refused in 1867 to allow their ancient Parliament to be merged in one for the whole empire; and it cannot be doubted that they were right. A federal union, as explained above, was the natural means at that time of strengthening the Austrian state, which had just lost its Italian possessions, and probably was no more weakened by that loss than England was really weakened by the independence of America. A federal union between this country and its dependencies is not practicable on an ordinary representative system; but the means exist of producing such a union without the creation of any new institutions whatever. It must be through the crown.

It is nearly forgotten, in the practical working of the constitutional administration of this country, that one very important and conspicuous member of the system has no legal existence. The chief ministers of the crown, those holding certain high offices, the chancellor, the secretaries of state, one or more of the treasury department, and a few others, are said to compose the cabinet council. There is a slight error of definition in so speaking of them. A cabinet council does not exist in law; but when the high officers of state meet

together, not to perform legal acts, but to consult only, they are said to meet in cabinet council. If actual business has to be transacted, a meeting is called of the privy council, which alone according to our laws can perform certain acts; and the ministers of the crown are responsible for the acts done according to their advice to the crown in council. But the privy council consists of more than the confidential servants of the crown; for it has been usual never to displace, except for reason, any man who has once been honoured with the king's confidence; while the meetings of the council, and also of its committees, are in practice attended only by those summoned, who of course are always those ministers who at the time hold office. There is nothing to prevent any member of the council from attending at its meetings and tendering there his advice; of which, as well as the advice of all who do tender it, the clerk, a sworn officer, is bound to take minutes. On two occasions in the eighteenth century, certain uninvited members broke through this practice (of abstaining from attendance unsummoned); and such may be done at any time. Indeed, having regard to the oath taken by privy councillors, it may be maintained that a member, believing that a public measure which he esteems of detriment to the commonwealth is about to be adopted—such as the declaration of an unrighteous war, or the conclusion of a dishonourable peace—is bound by his duty to put forward his advice, with his reasons for giving it. It may likewise be maintained, although not on such ground as that of an obligation upon oath, that it is the duty of the king, if such advice is given him by his ministers as he believes to be bad, to summon the whole body of his sworn advisers (councillors) and require their opinions before acting. Without any change whatever

in our laws, there is in the privy council a dormant power which is susceptible of being called into existence for the purposes of the administration of the state. The members of the privy council are nominated by the king, always with the ascertained concurrence of the Parliament, or on the recommendation of his responsible advisers for the time, and are removable by him only; which removal ought to be only on the advice by address of one of the Houses of Parliament, or for such private reason as would commend itself if debated to the sense of Parliament. That body, if made a reality; if its dormant active existence were revived; is capable of becoming what does not exist in our constitution now—a great council of the state for administrative purposes. At present, if a treaty with a foreign power is entered upon, it is the act of the crown (on the advice of the council), and it is only by custom and not by obligation that such treaty is made public by presentation to Parliament. It is no fanciful or merely speculative evil, that this power is absolutely and without control or possibility of revision in the hands of the ministers for the time being, as it actually is; for a treaty is a contract which, once made, may not be unmade. It is right that the negotiations which must precede every treaty should be conducted secretly; but it is not right that every treaty should be brought to an unappealable conclusion secretly, and the wisest critics struck dumb by being told that it is too late to object. The Americans know this, and have provided against it. We have the means of doing the same if we use them. There are other reasons why the privy council's dormant action should be revived; and the statesman who ever does it will be a patriot and a public benefactor.

Before the disputes between Great Britain and the

colonies arrived at a state of acrimony which forbade peaceful settlement, some of those colonies had been habitually represented in London by paid agents or ambassadors. These were generally not Americans but Englishmen. One of the agents for the state of New York for some years was Edmund Burke. The nature of the business which they transacted for their clients made them ambassadors of a not very high order—perhaps rather attorneys and solicitors; still there can be no doubt of the usefulness of such representatives; and it is no disparagement to such men as Burke and Franklin that they were unable to keep the peace from being broken. It is well known that, in judging of colonial affairs, the government of Lord North relied constantly on the representations of facts which they received from the governors of provinces and other officials of English nomination; listening not to such men as Franklin, but to persons like Hutchinson. We have at the present time colonial agents, but they are even less influential than the agents of the American States before independence; and a good deal of the bad traditions of that time still survives in our colonial office. Frequently, as in the case of Canada in 1838, and in the case of the Cape settlements at this time, the action of the imperial government has been determined from the advice of their own correspondents, and not by taking the best colonial opinion. It is often said, when this is observed upon, that colonial opinion is prejudiced; which it probably is, every man having at least one prejudice concerning his own affairs; which is, that they are of more importance than anything else. Any meaning which the objection to prejudiced opinion as such can have, is the stupid and insolent assumption of ignorant men; for it contains in its assertion, that to be informed on a subject and to have interests in it

makes a disqualification to form a sound opinion concerning it. Perhaps we should not blame Lord North, after all; for he has numerous imitators at the present moment, as often as the affairs of the Cape or of India are discussed; the disposition may belong to human or to English nature. Now, it is evident, that the American complications of the last century came entirely, never anything more entirely, from neglect of the representations and reports of the agents of the Americans; and one reason of this neglect was, that the agents, although as to their clients they were official persons, were private and unrecognized men to the government at home. If, at this time, an embassy were to come from the Parliament of any one of our colonies, to represent its interests, saying that they could not get redress or satisfaction through the governor, there is every probability that it would be listened to and would succeed. But this would, or might, be at the permanent loss of that governor or any future one's authority, and at the loss of good relations between the colony and the metropolis. Such considerations may in part account for the failure of the colonial agents in the last century in averting hostility and eventual war. Whereas if such residents had been recognized officially, no open difference need have ever taken place between them and the correspondents in America, from whom the home government derived its inspiration. Similarly, if we had now permanent ambassadors, fully and officially recognized, from our various colonies, the representations which they could make might become a means of arriving at a permanent foundation for imperial policy in relation to the colonies and their affairs.

The institution of such ambassadors might be made more than this. If they were made, as a matter of

course, members of the privy council, and if there were added to that council the most eminent of our Indian statesmen, and if the privy council was restored to its constitutional functions, a great council of the empire, representative in the truest sense, though not elected from time to time by electoral colleges like the legislature, is at once provided. It has been said that, if England was engaged in a great maritime war—for instance, with France, or with France in alliance with Spain, as in the last century—then our colonies would have no interests in such a war, and would have every interest, considering their exposed position, generally undefended by fortresses, in keeping out of it. Assuming that the connection between the metropolis and its colonies ought to be maintained, it is a matter that cannot be predicted that they would in such event have no common interest with us; and assuming that they will naturally and in the course of time become independent states of themselves, nothing could be more inexpedient than that their independence should be initiated in the middle of a great maritime war carried on by England. If England is ever necessitated to engage in such a war—and it cannot be said with certainty that this shall not be next year or next month—those who are to bear a portion of its weight, to share its victories and defeats, to have their progress and their interests affected for years or perhaps for ages, have a natural right to be consulted. And if they have a natural right to be consulted, it is natural and right that this shall be done in a constitutional way, and not left, as it would be now should such consultation be made at all, to mere chance; for the reports of governors, and telegrams from public meetings, and stories in newspapers, all that can now be relied upon for forming an estimate of colonial opinion, are in their

nature loose and uncertain. Such a federation of England with the colonies and with India would be useful in other cases than the extreme one which is supposed; it would be useful when the terms of any foreign treaty would have to be considered. When the crown makes any treaty with a foreign state, the engagement of the crown binds all the members of the British empire; but the consultative authority through which the crown acts is responsible to the Parliament of Great Britain only, and the outlying members of the empire are unrepresented both in it and in the Parliament. Such a federation would also naturally have before it all matters connected with the defences of the empire; and generally, all matters of imperial administrative concern.

It is no small recommendation to a scheme like the above, that it could be initiated, and brought to maturity, without the matter being brought before the legislature; for the federation need not, and more profitably ought not, to have its functions defined on its institution; they ought rather to be allowed to develop themselves as occasion should arise. The body of our constitution, and of our constitutional law, has not been the creation of Parliament in its capacity of law-maker; and the legislative or law-making power is not the highest function of Parliament. Law is the expression of society; it is not artificial; and constitutions, to be worthy the name, are not artificial either. If the British empire is to be a permanent reality; if the British principle of colonization is essentially different from the Grecian; if it be for the benefit of the human family that the waste places of the earth which our commonwealth has planted, and may yet plant, should remain members of our commonwealth, and not become, as they might become, planets without an orbit; federa-

tion under some form is now, or will become at some time, necessary. The representative method through electoral colleges is inapplicable; and there appears, not only in default of it, but in itself, no more proper means to that federation than a use of the natural, historical, and constitutional powers of the crown.

The corporate constitution of the Christian Church.

No treatise like this need attempt to aim at completeness; the science of sociology is inexhaustible. The author has laboured to put forward a principle, not new, but very old, which he believes to be like a touchstone by which public measures of law, of the administration of justice, and of the administration of affairs, at least in the spirit by which those who are engaged in them are animated, may be tried. That principle is not capable of being summed up in a few words; and is to be discerned rather in its application than in any possible definition. For this reason various of the practical questions which have formerly engaged, and which now engage, the interest of the community, have been spoken of in a manner which would not be proper in a purely speculative treatise.

But this treatise would be more incomplete than its author desires it to be, if he did not state the doctrine which he holds respecting the constitution of the Christian society; remembering that this belongs accidentally, and not essentially, to the science of the commonwealth, because civilized communities have existed, and exist now, in which and in connection with which there is no Christian society. The continuity of a society consists in two things; in the permanence of the vitality of the principles which

animate it, and on which its regulations and administration, in their nature variable at various times, are conducted; and in the succession of its officers. If it parts with the first, it loses its soul; if it parts with the second, it loses its body.

It is not necessary to expound, that all failure of the Christian Church in living in accordance with its fundamental principles is not a denial of those principles in form; and that Christianity remains, depraved from what it is supposed to have been in the first generation of the Church, but still Christianity. The constitution, as a corporate body, of the Church, is what is in question; that body which, like all corporations, can be perpetuated as such only in the succession of its officers. That succession is not the succession of the bishops of a particular see, or of a particular province; but is the succession of the whole order of bishops in the whole Church all over the world; and has been and is secured by the simple and self-acting machinery which has been universal certainly since the beginning of the third century, and almost certainly since the very beginning of the Church's existence. A bishop, according to the apostolical constitutions—and their authenticity or the reverse does not signify, seeing that the system was always acted on—is to be consecrated to his office by three, or at the least two, bishops, who have been themselves consecrated in like manner; and so on back to the first generation of the Church, when the first consecrations were made by those who derived their commission from the founder of Christianity. Accordingly, a break in the succession of the episcopal order is impossible; and invalidity of consecration, should such occur, does not perpetuate itself; for if a bishop of invalid orders takes part in a consecration, his part in it does not vitiate the act of the other two

with whom he is associated in it. This is "the doctrine of the apostolical succession," erroneously supposed by multitudes to be of some superstitious meaning; but evidently, when stated, not a "doctrine" at all, but merely the exposition of the constitutional practice of the Catholic Church in the matter of regulating the conferring of legal powers upon its ministers. It belongs to all national Churches; to those of the east and west, to those of the north and south, of Europe; for the Churches of Switzerland, Germany, Holland, and Scotland do not reject the order of bishops, but maintain that that order is not by necessity different from the secondary order of priests or elders. The value and importance of this simple, unerring, and universal means of perpetuating the Christian society in unbroken continuity cannot be too highly esteemed; and not as a mechanical expedient only; for it is a permanent witness to the universality of the Church, and a testimony to its greatness as a society, greater than the nations which it includes; and it is a potential means to its ultimate exterior unity.

Conclusion. The belief has been expressed in the foregoing, that a political and moral crisis in the life of England is approaching; perhaps is near at hand. Democratic power is on the increase. If the mass of the population are increasing in the elements of power, in wealth and knowledge, it is natural that their political power should advance too; and it is vain to object to it, even if it ought to be objected to. That which ought to be objected to; and, more than that, resisted and opposed, is not democracy, but democracy after the manner of

France, which is not democracy at all, but a succession of central tyrannies, imperialist or republican as they may be, presiding over a network of small tyrannies. There are probably few men in England who are more sensible of the differences between French and American systems and principles than Mr. Bright; the great orator to whom liberty, both of trade and of person, owes more than to any man living; who failed, for want only of a more enlarged education, in being the greatest Englishman of the nineteenth century; who of all living politicians has been guilty of the fewest real inconsistencies; who has never ceased to lift up his voice in advocacy of a tax-free breakfast; who first, of all men in Europe, discerned the true issues that lay below the great American contest; who has lately counselled his countrymen (may it not be his last testament!), with his undecayed eloquence, and as with the warning voice of a seer, to stand on the old lines of the constitution. No man knows better than he, that if England requires to travel beyond her own limits to learn political wisdom, it is to be learned not from that nation which has never created but always destroyed, and committed the most enormous crimes in the destruction, but from that other, our own child, which in the political revolution of the last century, and in the social revolution of this, maintained the commonwealth unimpaired, and has constructed, not a perfect, which may not be, but a splendid and noble state.

POSTSCRIPT.

SINCE the treatise now published has gone to press, sundry corroborations of its leading principle have come under the notice of the author, some of them practical, others not very indirect authoritative confirmations.

The most important is to be found in a wise and pregnant essay in the *Contemporary Review* of February of this year (1884), by Mr. Herbert Spencer. The similarity of the ideas contained in it to the principle set forward in this treatise, if not their complete unity with that principle, is not difficult to recognize. Mr. Spencer's words and thoughts are wise, because they are true ; and pregnant, because they cannot fail to bring forth fruit, in men's opinions if not through their actions.

Secondly. The author has only recently become aware, by the accidental perusal of a memoir of the late Right Hon. James Wilson, that the views of that eminent and profound economist respecting a paper system of currency were almost identical with his own.

Thirdly. The utter and appalling stagnation in the land market of Ireland has excited the attention and alarm of many who approved the recent artificial legislation. Among the rest, Mr. Dickson, the member for

Tyrone, a vigorous supporter of that legislation, even to the extent of advocating more of the same character, is at the head of a project for a Land Bank, *half the capital to be furnished by the state*, which is to set the most important article of commerce in Ireland once more in commercial motion. This is curing poison by doses of an alterative poison. That disease must be indeed acute which makes men think of applying such a counter-irritant.

Fourthly. Were the author of the present treatise about commencing it now, he would certainly express himself much more strongly and at large concerning that over-education of children and young men which is proceeding and advancing. He has limited his observations to the effects of that over-education in the higher branches. If the lamentable death of an infant in Staffordshire, from over-schooling, had been known to him before this book went to press, that event, which ought to stir the spirits of all who believe that such children belong to Christ and not to the School Board, could not but have moved him to use strong words of abhorrence of the system of which that child was a victim. When one child *six and a half years old* has died, and when one boy eleven and a half years old has laid violent hands on himself, persecuted out of the world which God designed for the enjoyment of His creatures, and when these are in all certainty but examples, it is time that the inevitable reaction of which the author speaks should begin. When, further, we consider the reptile-like cruelty of the official comment on the first of these homicides, by way of repudiating blame towards either the school or the system, no circumstance is wanting to move disgust and indignation. Such heartlessness is eminently characteristic of too many of our new official class;

they are true *αστοργοι*, fit raw material for Torquemadas.

Other instances, many of them quite as salient, of corroboration, direct and indirect, of the "Principles of the Commonwealth," would not be hard to find.

